61894 9827 79

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 138.

MARY B. DUN, ROBERT DUN DOUGLASS, FRANCIS L. MINTON, AND WALTER D. BUCHANAN, EXECUTORS AND TRUSTEES UNDER THE WILL OF ROBERT G. DUN, DECEASED, APPELLANTS,

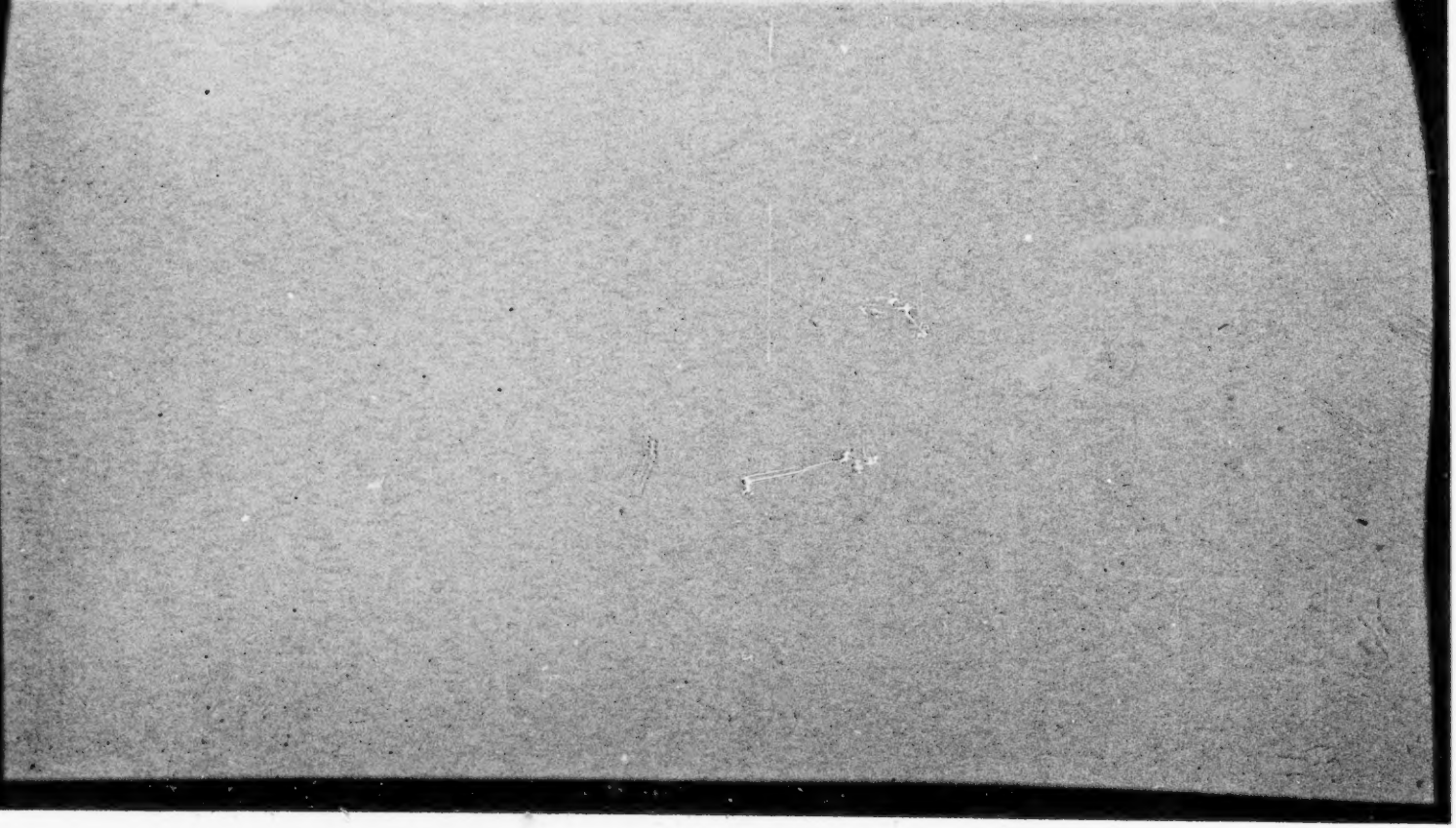
vs.

THE LUMBERMEN'S CREDIT ASSOCIATION, WILLIAM CLANCY, AND BURTON W. STADDEN.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

FILED OCTOBER 22, 1906.

(20,429.)



(20,429.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

No. 138.

MARY B. DUN, ROBERT DUN DOUGLASS, FRANCIS L. MINTON, AND WALTER D. BUCHANAN, EXECUTORS AND TRUSTEES UNDER THE WILL OF ROBERT G. DUN, DECEASED, APPELLANTS,

vs.

THE LUMBERMEN'S CREDIT ASSOCIATION, WILLIAM CLANCY, AND BURTON W. STADDEN.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

INDEX.

	Page.
Caption	*a*
Transcript from the circuit court of the United States for the northern district of Illinois	1
Placita	1
Bill of complaint	2
Exhibit—Certificates of copyright	16
Chancery subpœna	18
Marshal's return	19
Answer of Lumbermen's Credit Association	20
Exhibit A—Key to reference book and correction sheet	29
Answer of William Clancy and Burton W. Stadden	33
Replication to answer of Lumbermen's Credit Association	43
Replication to answer of William Clancy and Burton W. Stadden	44

Page.
Order of January 25, 1902, denying motion for restraining order and referring motion for injunction to Henry W. Bishop 45
Petition for rule on witness 46
Exhibit 335—Writ of summons 60
Notice of motion 63
Order of March 8, 1902, granting leave to complainants to examine witnesses and discharging rule as to William Clancy 64
Master's summons 65
Notice of motion 67
Order of May 13, 1902, denying motion to produce information called for. 68
Order of June 10, 1902, directing clerk not to issue commission to take depositions 69
Order of July 3, 1902, granting leave to withdraw motion for preliminary injunction 69
Order of Oct. 8, 1902, appointing Marshall E. Sampsell special examiner.. 70
Affidavit of Stanley T. Prudence 71
Exhibit A—Schedule of names, ratings, etc 73
Affidavit of James B. Gilbert 76
Fred W. Wright 78
Norman H. Young 84
Burton W. Stadden 88
William Clancy 95
Philip C. Howard 105
A. L. Knetler 107
William A. Douglass 109
John O'Connor 111
Evidence for complainants 112
Deposition of William L. Halsey 113
James Stratham Goree 121
Robert Dun Douglass 131
Joseph B. Payez 144
Lincoln Goodman 146
James H. Forlong 149
Complainants' Exhibit—Certificate of Librarian of Congress of complainants' deposit of title of March copyrighted book of 1901 155
Certificate of Librarian of Congress as to deposit of two copies of March copyrighted book of 1901 156
Postmaster's receipt for copyrighted book of 1901 157
Certificate of Librarian of Congress of deposit of title of July copyrighted book of 1901 158
Certificate of Librarian of Congress as to deposit of two copies of July book 158
Postmaster's receipt for July copyrighted book of 1901 159

Page.

Complainants' Exhibit—Certificate of Librarian of Congress of deposit of title of September copyrighted book of 1901 159
Certificate of Librarian of Congress as to deposit of two copies of September book. 160
Postmaster's receipt for September copyrighted book of 1901 161
Certificate of special examiner 161
Deposition of E. Lovvorn 164
Col. J. M. McBride 166
J. A. Head 167
E. Gillman 171
Julian B. Parke 177
Dr. A. W. Cawthon 181
Nathan Kahn 183
Robert L. Dudley 190
Exhibit A—Page from Pittsburg directory 193
William H. Radcliff 198
W. D. Brown 201
Arthur B. Wigley 203
Thorvald Solberg 212
Arthur Crisfield 229
C. Powell Grady 234
Frederick William Ashley 237
Philip H. Marquard 243
Frank R. Cattrall 247
Exhibit A—R. G. Dun & Co.'s records of Marquard Sash and Door Mfg. Co. 250
Julian L. Swaim 257
Exhibit A—Monthly statement 259
William Wagner 263
Manilius Schreiner 266
Exhibit A—Business card of Himebaugh & Schreiner 267
Jacob E. Himebaugh 269
Exhibit B—Business card of Himebaugh & Schreiner 269
William Schreiner 271
John Brawley 276
John A. Brawley 279
J. Nott Hoffman 286
John A. McBride 290
C. D. Malloy 295
Exhibit A—Check for $24.77 295
E. S. Koepenick 304
Subpœna 310
Testimony taken before Henry W. Bishop, master in chancery 310
Index to exhibits, etc. 310

Page.
Deposition of William Clancy 314
Master's summons 389
Order granting leave to complainants to examine witnesses 391
Testimony taken before Marshall E. Sampsell, special examiner 394
Deposition of William E. Ferguson 394
W. C. Thorbus 435
William J. Kelly 442
Ferdinand Volkert 454
Francis H. Moore 460
William J. Kelly (recalled) 475
Ferdinand Volkert (recalled) 478
William A. Douglas 487
Theodore E. Stein 502
Jerry Hubal 565
Theodore E. Stein (recalled) 598
Frank J. Gallagher 608
Anthony J. Kramer 620
Theodore E. Stein (recalled) 629
Anthony J. Kramer (recalled) 633
Burton W. Stadden 634
Evidence for defendants 636
Deposition of Elmer Wheaton 636
Heber Fuller 656
Abraham L. Knefler 674
Philip C. Howard 694
John F. Gallagher 707
Stanley T. Prudence 718
Edwin F. Abbott 722
Stanley T. Prudence (recalled) 737
John R. O'Connor 744
Foster F. Fish 745
William Clancy 757
Burton W. Stadden 796
Revedy Whiteside 844
Abraham L. Knefler (recalled) 854
Joseph F. Beegan 855
Edward L. Roberts 864
Albert W. True 872
C. F. Wiehe 879
William S. Keith 884
G. J. Pope 892
George H. Holt 902
Edwin E. Hooper 906
James E. Defebaugh 912
A. S. Badger 919
W. G. Kimball 925
A. H. Tuttle 928
Complainants' Exhibit 9 950
Burton W. Stadden (recalled) 953

Page
Deposition of Abraham L. Knefler 955
A. H. Tuttle (recalled) 970
Abraham L. Knefler (recalled) 973
Frank B. Pease 977
Evidence for complainants in rebuttal 979
Deposition of Theodore E. Stein 979
Certificate of special master 1002
Exemplified copy of will of Robert Graham Dun 1004
Opinion 1021
Decree 1023
Petition for appeal 1025
Assignment of errors 1026
Order allowing appeal 1028
Order approving bond 1029
Bond on appeal 1029
Order of February 27, 1905, extending time to file transcript 1031
Order of March 7, 1905, as to original exhibits 1032
Precipe for transcript 1033
Certificate of clerk 1035
Citation 1036
Certificate of clerk to printed record 1037
Motion to use original exhibits 1038
Order to use original exhibits 1039
Appearance for appellants 1040
Appearance for appellees 1040
Stipulation as to time to file briefs 1041
Order setting cause for hearing 1042
Argument and submission 1042
Opinion 1043
Decree 1045
Notice of petition for rehearing 1045
Affidavit of Harry A. McLain 1046
John O'Connor 1049
Thomas M. Hoyne 1052
Motion to strike petition for rehearing filed 1053
Supplemental petition for rehearing filed 1053
Affidavit of Philip C. Howard 1054
John O'Connor 1058
Motion to strike supplemental petition for rehearing filed 1058
Order denying petition for rehearing 1059
Petition for appeal 1059
Assignment of errors 1060
Affidavit of value 1063
Bond on appeal 1064
Order allowing appeal 1065
Clerk's certificate 1066
Citation and service 1066

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT.

OCTOBER TERM, A. D. 1904.

No. 1178.

MARY B. DUN, ROBERT DUN DOUGLASS, FRANCIS L. MINTON AND WALTER D. BUCHANAN, EXECUTORS AND TRUSTEES UNDER THE WILL OF ROBERT G. DUN, DECEASED,
Appellants,

vs.

THE LUMBERMEN'S CREDIT ASSOCIATION, WILLIAM CLANCY AND BURTON W. STADDEN,
Appellees.

MR. THOMAS M. HOYNE,
MR. JOHN O'CONNOR,
MR. CHARLES K. OFFIELD,
MR. HENRY S. TOWLE,
MR. CHARLES C. LINTHICUM,
MR. MACLAY HOYNE,
Counsel for Appellants.

MR. FRED H. ATWOOD,
MR. FRANK B. PEASE,
MR. WILLIAM S. CORBIN,
MR. CHARLES O. LOUCKS,
Counsel for Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

2 Pleas in the Circuit Court of the United States for the Northern District of Illinois—Northern Division in Chancery sitting at the United States Court room, in the City of Chicago, in said District and Division, before the Hon. Christian C. Kohlsaat District Judge of the United States for said Northern District of Illinois, on Monday, the ninth day of January, in the year of our Lord one thousand nine hundred and five, being one of the days of the regular December term of said Court, 1904, and of our independence the one hundred and twenty-ninth year. Placi

MARSHALL E. SAMPSELL,
Clerk.

3 Northern District of Illinois— Northern Division. } ss.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the Will of Robert G. Dun, deceased,

vs.

The Lumbermen's Credit Association, William Clancy and Burton W. Stadden,

In Chancery, 36,143

Be it remembered that on this day to-wit: the seventeenth day of January, 1902, came the complainants in the above entitled cause by their solicitors, Messrs. Hoyne, O'Connor and Hoyne and Mr. Edwin F. Abbott, of counsel and filed in the Clerk's office of said Court their certain Bill of Complaint in words and figures following to-wit:

4 BILL OF COMPLAINT.

United States of America, Northern District of Illinois, Northern Division. } ss.

IN THE

CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Northern Division.

To the Honorable, the Judges of the Circuit Court of the United States, for the Northern District of Illinois, Northern Division:

Your orators, Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the will of Robert G. Dun, deceased, bring this bill of complaint against the defendants, The Lumbermen's Credit Association, William Clancy and Burton W. Stadden, and respectfully show that your orators are executors and trustees

under the last will and testament of Robert G. Dun, deceased, that the said Mary B. Dun, Francis L. Minton and Walter D. Buchanan are each a resident and citizen of the State of New York; that the said Robert Dun Douglass is a resident and citizen of the State of New Jersey; that the above named defendant, The Lumbermen's Credit Association, is a corporation organized and existing under the laws of the State of Illinois and as such is a resident and citizen of the State of Illinois having its principal office in the City of Chicago in said District, and that the above named defendants, William Clancy and Burton W. Stadden, are residents and citizens of the said State of Illinois and of the said City of Chicago

Your orators further show that under the firm name of R. G. Dun & Co. they carry on the business known as the R. G. Dun & Co. Mercantile Agency, the object of which is to collect, record and preserve information concerning the business standing and credit of merchants, manufacturers and traders throughout the United States, the Dominion of Canada and the British Provinces of North America, and to communicate this information to the subscribers or patrons of the said business; that the said business, so carried on by your orators, was established by their predecessors in the said business upwards of fifty years ago; that those predecessors gathered, recorded and preserved information of that character concerning many thousands of merchants, manufacturers and traders, and the records of that information and the good will of the said business have been transferred to your orators and are owned by your orators as executors and trustees as aforesaid; that Robert G. Dun, the testator of your orators, had been a member of the firm of R. G. Dun & Co. and of firms which preceded it in the said business for more than forty years prior to his death on or about the tenth day of November, 1900; that for more than fifteen years next preceding his death the said business had been conducted by the said firm of R. G. Dun & Co., consisting of the said Robert G. Dun and the said complainant, Robert Dun Douglass, as ostensible partners; that although the said Robert Dun Douglass was held out to the world as a partner of the said Robert G. Dun in the said business he in fact had no interest therein as an owner, but the said Robert G. Dun was the sole owner thereof; that at the time of the death of the said Robert G. Dun he left a last will and testament which was duly admitted to probate in the Surrogates Court of

int. 7. the City, County and State of New York on or about the thirteenth day of December, 1900; that in and by the
6 said will the said Robert G. Dun, among other things, bequeathed the good will of the said business and all property of his used, employed or invested in the said business at the time of his death wheresoever situated unto your orators as his executors, their survivors and successors in trust, nevertheless, for certain purposes specified in the said will; and directed your orators as such trustees to continue the said business during the life of his wife and if his nephew, Robert Dun Douglass, should survive her, then during his life but no longer than for one year after her death, and your orators aver that the said wife and the said nephew of the said Robert G. Dun are still living.

Your orators further show that they duly accepted said trust and qualified as such executors and trustees under said will on the thirteenth day of December, 1900 and have since been continuously acting as such.

Your orators further show that one means of communicating information to the patrons of the said business is by means of different issues or editions of a printed book called a Reference Book; that for more than twenty years last past there have been printed and published in the course of the said business four editions of that book in each year, which editions have been known respectively as the January, March, July and September editions, and which have been printed and published in or about those months respectively; that each edition of the said Reference Book contains the names, the business and the addresses of over one million different persons, firms and corporations engaged in business in the United States, Canada and the British Provinces and affixed to nearly every name are estimates of the pecuniary strength and of the general credit thereof; that the information from which the said Reference Books have been composed was gathered by the agents, employes and correspondents of your orators and their predecessors in or near the places of business of the persons, firms and corporations aforesaid; that for the purpose of gathering that information your orators now have and for many years they and their predecessors
7 have had, many thousands of such agents, employes and correspondents in the United States and in the Dominion of Canada and in the British Provinces who have been employed by your orators and their predecessors at an annual expense of many hundreds of thousands of dollars.

Your orators further show that in or about each of the months of March, July and September, 1899, January, March, July and September, 1900, and January, March, July and September, 1901, respectively, they and their predecessors, respectively, composed, printed and published an edition of the said Reference Book and duly copyrighted the same according to the statutes of the United States; that on or about the 24th day of January, 1901, and before the day of publication in this or any foreign country your orators delivered at the office of the Librarian of Congress at Washington, District of Columbia, a printed copy of the title of the said March 1901 edition of the said Book, as appears by a certificate issued by the Librarian of Congress now in possession of your orators, a copy of which is hereto annexed as Exhibit 1 and made a part hereof; that upon so depositing the title of the said March 1901 Book with the said Librarian of Congress your orators paid his legal fee for recording the title thereof; that afterwards, and on or about the twenty-third day of February, 1901, and not later than the day of the publication of the said March 1901 Book in this or any foreign country your orators deposited in the mail within the United States addressed to the Librarian of Congress at Washington, District of Columbia, two copies of such copyright Book, printed from type set within the limits of the United States of America; and that your orators gave notice of their copyright so acquired in the said Book by inserting in the several copies of every edition thereof published on the page immediately following the title page the following words: "Copyright, 1901 by R. G. Dun & Co."

Your orators further show that on or about the twenty-second day of May, 1901, and before the day of publication in this or any foreign country your orators delivered at
8 the office of the Librarian of Congress, at Washington, District of Columbia, a printed copy of the title of the said July, 1901, edition of the said Book as appears by a certificate issued by the Librarian of Congress now in possession of your orators, a copy of which is hereto annexed as Exhibit 2 and made a part hereof; that upon so depositing the title of the said last mentioned Book with the said Librarian of Congress your orators paid his legal fees for recording the title thereof; that on or about the twenty-sixth day of June, 1901, and not later than the day of the publication of the said last mentioned Book in this or any foreign country

nt. your orators deposited in the mail within the United States, addressed to the Librarian of Congress, at Washington, District of Columbia, two copies of such last mentioned copyright Book, printed from type set within the limits of the United States of America, and that your orators gave notice of their copyright so acquired in the said last mentioned Book by inserting in the several copies of every edition thereof published on the page immediately following the title page the following words: "Copyright, 1901 by R. G. Dun & Co."

Your orators further show that on or about the fifth day of August 1901, and before the day of publication in this or any foreign country, your orators delivered at the office of the Librarian of Congress, at Washington, District of Columbia, a printed copy of the title of the said September 1901 edition of the said Book as appears by a certificate issued by the Librarian of Congress now in possession of your orators, a copy of which is hereto annexed as Exhibit 3 and made a part hereof; that upon so depositing the title of the said last mentioned Book with the said Librarian of Congress your orators paid his legal fees for recording the title thereof; that afterwards and on or before the twenty-fourth day of August, 1901, and not later than the day of the publication thereof in this or any foreign country your orators deposited in the mail within the United States, addressed to the Librarian of Congress, at Washington, District of Columbia, two copies of such last mentioned copyright Book, printed from type set within the limits of the United States of America, and that your orators gave notice of their copyright so acquired in the said last mentioned Book by inserting in the several copies of every edition thereof published on the
9 page immediately following the title page the following words: "Copyright, 1901 by R. G. Dun & Co."

Your orators further represent that they have in all things complied with the conditions and provisions of the Revised Statutes of the United States in such case made and provided, and have thereby obtained copyrights of the United States for the said Reference Books of March, July and September 1901 whereby there was and is vested in your orators as executors and trustees as aforesaid the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing and vending the same for the term of twenty-eight years, and your orators are now and at all times since the obtaining of their copyrights of the said Books have been

the sole and exclusive owners and proprietors of the same and of all the rights and privileges granted and secured thereby. Copies of which Reference Books so copyrighted have been, or will be, deposited in the office of the Clerk of this Court for the convenience of your Honors and of the defendants, and are made a part of this bill as Exhibits 4, 5 and 6, respectively.

Your orators further represent that the defendant, the said Lumbermen's Credit Association, is now and has been for more than eight years last past engaged in the business of printing and publishing a certain book entitled or described by the said defendants as "The Reference Book of the Lumbermen's Credit Association"; which contains names, addresses and ratings of wholesale and retail dealers in the lumber trade throughout the United States.

Your orators further represent that they are informed and believe and, therefore, charge the fact to be that for many years prior to 1893 the business of printing and publishing said Reference Boook now owned by the said Lumbermen's Credit Association had been owned and carried on by the said William Clancy under the name of the Lumber Mercantile Association, William Clancy, Acting Manager; that in the said year 1893 the said Lumbermen's Credit Association was incorporated for the purpose of carrying on the said business of printing and publishing the said book; that the capital of the said corporation is fifty thousand dollars ($50,000.00) divided into five hundred (500) shares of one hundred dollars ($100.00) each; that ever since the organization of the said Company the said William Clancy has been and still is the owner of four hundred ninety-eight (498) shares of the capital stock of the said company and has been and still is the president and treasurer of the said company; that ever since the organization of the said company A. C. Clancy, wife of the said William Clancy, has been and still is the owner, or apparent owner, of one share of the capital stock of said company, and has been and still is the vice president of the said company; that ever since the organization of the said company Burton W. Stadden has been the owner, or apparent owner, of one share of the capital stock of the said company, and has been and still is the secretary of the said company.

Your orators further represent that they are informed and believe and, therefore, charge the fact to be that while the said William Clancy so carried on the said business be-

fore the formation of the said Lumbermen's Credit Association as aforesaid he published his said Reference Book semi-annually in January and July of each year and compiled and made up the same wholly or in great part from the information contained in the Reference Books previously issued by the predecessors of your orators and without making any original investigations or inquiries for the information necessary to the composing, compiling and publishing of such a book.

Your orators further represent that they are informed and believe and, therefore, charge the fact to be that after the said William Credit Association was formed and begun to carry on the said business of publishing its said Reference Book as aforesaid the said company and the said William Clancy and the said Burton W. Stadden continued the practice of the said William Clancy in pirating from the Reference Books of the predecessors of your orators and during all the time said Lumbermen's Credit Association has carried on the said business as aforesaid it has published its said book semi-annually in January and July of each year
11 and it and the said William Clancy and the said Burton W. Stadden have compiled and made up the same wholly, or in great part, from the information contained in the Reference Books previously published by your orators and their predecessors and without making any original investigations or inquiries necessary to the composing, compiling and publishing of such a book; and your orators particularly charge the fact to be that the edition of the said book printed and published by the said Lumbermen's Credit Association in July, 1901 was compiled and made up by that defendant and the said William Clancy and the said Burton W. Stadden wholly, or in great part, from the information contained in the said copyrighted March 1901 edition of the Reference Book of your orators, and was wholly or in part compiled and published by the said defendants without making any original investigation or inquiry for the information necessary to the composing, compiling and publishing of such a book.

And your orators further represent that the said Lumbermen's Credit Association has for some time been engaged in compiling an edition of its said book to be issued in January 1902 and, the compilation of the same having been completed, the said book is now in the hands of the printer, who is engaged in printing the same; that within a few days the

said book, unless prevented by the order of this court, will be printed and bound and ready for delivery; that the said Lumbermen's Credit Association has over seven hundred (700) subscribers, who, by virtue of their subscription, are entitled to the said book when completed; that the said Lumbermen's Credit Association, and the said William Clancy and the said Burton W. Stadden intend to issue the said book when completed, to the said subscribers and, unless restrained by the order of this court, will, as soon as the said book is completed, proceed without delay to deliver the same to the said subscribers as fast as possible, and will sell and deliver the same to such other persons as may desire to become subscribers for the same; and your orators aver that the said book so to be issued was compiled and made up by the said Lumbermen's Credit Association and the said William Clancy and the said Burton W. Stadden wholly, or in great part, from the information contained in the said copyrighted March, July and September, 1901 editions of the said Reference Book of your orators, but more particularly, the said September 1901 edition thereof, and was wholly or in great part compiled and is intended to be published by the said defendants without making any original investigation or inquiry for the information necessary to the composing, compiling and publishing of the said book.

Bill of filed 1902

12

Your orators further represent that in the said Reference Books of your orators and the said Lumbermen's Credit Association certain letters and figures are used to indicate what the persons, firms and corporations therein mentioned are supposed to be worth and to what extent it is believed they may be safely credited, the said letters indicating the amount of property or capital said persons, firms or corporations are supposed to possess, and the said figures indicating the limit of credit which it is supposed may be safely extended to them; and your orators aver that in the said Reference Books of your orators and said Lumbermen's Credit Association the same letters and figures are to a great extent used for the purposes aforesaid, although your orators and the said Lumbermen's Credit Association do not use the same letters and figures to indicate the same amounts, but a letter or figure indicating a certain amount of capital or credit according to the system of rating adopted by your orators indicates a very different amount of capital or credit according to the system of rating adopted by the said Lumbermen's Credit Association.

aint. 17. And your orators further represent that the said Lumbermen's Credit Association and the said William Clancy and the said Burton W. Stadden, in compiling the said July 1901 Book of the said Lumbermen's Credit Association copied, in some instances, names of towns and, in other instances, names and ratings of persons, firms and corporations 13 from the said copyrighted March 1901 Book of your orators and, in other instances, used the ratings in the said copyrighted March 1901 Book of your orators in fixing the ratings in the said July 1901 Book of the said Lumbermen's Association, but instead of literally copying the ratings as shown in the said copyrighted March 1901 Book of your orators inserted the same in the said July 1901 Book of the said Lumbermen's Credit Association with slight and colorable changes for the purpose of concealing the act of the said defendants in pirating the same as aforesaid And, in other instances, the said defendants intended to copy the ratings appearing in the said copyrighted March 1901 Book of your orators but by mistake copied the same letters and figures therein used by your orators according to their system of rating and thereby unintentionally gave different ratings from those given by your orators.

And your orators further represent that the said Lumbermen's Credit Association and the said William Clancy and the said Burton W. Stadden, in compiling the said edition of the said Reference Book of the said Lumbermen's Credit Association intended to be issued in January 1902 and now in the hands of the printer as aforesaid, copied, in some instances, names of towns, and, in other instances, genuine and fictitious names and ratings of persons, firms and corporations from the said copyrighted 1901 Book of your orators and, in other instances, used the ratings in the said copyrighted September 1901 Book of your orators in fixing the ratings in the said January, 1902 Book of the said Lumbermen's Credit Association but instead of literally copying the ratings as shown in the said copyrighted September 1901 Book of your orators inserted the same in the said January 1902 Book of the said Lumbermen's Credit Association with slight and colorable changes for the purpose of concealing the act of the said defendants in pirating the same as aforesaid and, in other instances, the said defendants intended to copy the ratings appearing in the said copyrighted September 1901

Book of your orators but by mistake copied the same let-
14 ters and figures therein used by your orators accord-
ing to their system of ratings and thereby unintentionally gave different ratings from those given by your orators. Bill of filed 1902

Your orators further represent that they or their predecessors have never sold their said Reference Book to their patrons but have only allowed their patrons the temporary use thereof under an agreement that their patrons alone were to use the said book and to regard the contents thereof as confidntial and were not to permit any other person to make any use of said book; but that the said Lumbermen's Credit Association and the said William Clancy and the said Burton W. Stadden having never been patrons or subscribers of your orators or their predecessors and having been unable to procure the said book directly from your orators, or their predecessors, have for years procured copies thereof either by entering into collusion with a regular subscriber therefor to allow them to use the same for the fraudulent and piratical purpose aforesaid or by inducing some person to become a subscriber for the said book and thereby obtain the same and then turn it over to the said defendants for the fraudulent and piratical purposes aforesaid.

Your orators further represent that he said copyrighted March, July and September 1901 editions of their said Reference Book, particularly the said September 1901 edition thereof, are published by your orators to many thousands of patrons and subscribers of your orators in the State of Illinois and in other states of the United States, from whom your orators receive therefor a large sum of money, the receipt of which by your orators is necessary for the purpose of defraying the great costs and expenses to which your orators are put in gathering the information from which the said editions of the said book, particularly the said September 1901 edition thereof are compiled as aforesaid and of affording your orators a reasonable profit, and your orators further aver that their said book includes the names and ratings of persons, firms and corporations engaged in many different trades, including the lumber trade; that many of
15 the patrons of your orators are chiefly or solely interested in the lumber trade; that the said book of the said Lumbermen's Credit Association is intended to compete with the said Book of your orators as far as the said book of the said Lumbermen's Credit Association covers or purports to cover the lumber business; and your orators further aver that the

laint. 17. said edition of the said Reference Book of the said Lumbermen's Credit Association now in the hands of the printers and about to be issued as aforesaid, is intended by the said Lumbermen's Credit Association and the said William Clancy and the said Burton W. Stadden to be distributed among the subscribers of the said Lumbermen's Credit Association and to be sold in competition with the said Reference Book of your orators and that, unless restrained by an injunction of this Honorable Court, the said Lumbermen's Credit Association and the said William Clancy and the said Burton W. Stadden will sell and circulate the same when completed throughout the lumber trade of the United States and to such other persons as may desire to subscribe for the same and will thereby cause great and irreparable injury to your orators.

Your orators further charge the fact to be that the said defendant, William Clancy, as the president and active business head and manager of the said Lumbermen's Credit Association and the said Burton W. Stadden as the secretary and assistant manager thereof have joined with the said Lumbermen's Credit Association in taking the aforesaid information from the said copyrighted editions of the said Reference Book of your orators and in publishing and attempting to publish the same in the said Reference Book of the said Lumbermen's Credit Association as aforesaid.

Your orators further charge the fact to be that by reason of the aforesaid acts of the said defendants, which have only recently come to the knowledge of your orators, your orators have been deprived of benefits, gains and profits which otherwise would have been obtained by your orators, and the said defendants by reason of their aforesaid wrongful acts have realized large profits and advantages and unless the
16 said acts are prevented by this Honorable Court your orators will continue to be deprived of benefits, gains and profits to which they are entitled by reason of their aforesaid copyrights, and the said defendants will continue to make and realize wrongful profits as aforesaid.

Your orators further represent that their rights will be unduly prejudiced if the injunction herein prayed is not issued immediately without notice to the said defendants, or any of them.

Forasmuch, Therefore, as your orators are without remedy in the premises, except in a court of equity, and to the end that the said Lumbermen's Credit Association, William

Clancy and Burton W. Stadden, and each of them, may be required to make full and direct answer to all and singular the charges and matters herein contained (but not under oath, their answers and the answer of each of them under oath being hereby evpressly waived) as fully and particularly as if the same were here again repeated and they thereunto specially interrogated; that the said defendants and each of their agents, attorneys, servants, employes, workmen, and all persons acting in aid or assistance of them, or any of them, may each any every of them be forever enjoined and restrained from printing, reprinting, publishing, completing, copying, executing, finishing or vending or giving away either directly or indirectly any of the matter contained in the said copyrighted March, July or September 1901 editions of the said Reference Book of your orators without the consent of your orators as the proprietors thereof, and from printing, reprinting, publishing or vending or giving away any copies of the said July 1901, or the said contemplated January 1902 edition of the said Reference Book of the said Lumbermen's Credit Association, or any part thereof, or any book or edition of any book like or substantially like either in whole or in part the said copyrighted editions of your orators' said Reference Book, or any of them, or any book or edition of any book copied or pirated in whole or in part from the said copyrighted editions of your orators' said Reference Book, or any of them, and that the said defendants be ordered and directed to render an account of the copies of the said
17 infringing editions of the said book of the said Lumbermen's Credit Association which the said defendants, or any or either of them, may have sold and to pay over the proceeds of such sales to the said complainants, and that the said defendants may be decreed to pay the costs of this suit, and that your orators may have such other and further relief as to the Court shall seem just and proper.

Bill o filed 190

May it please the Court to Grant to your orators a writ of injunction, issuing out of and under the seal of this Court, commanding, enjoining and restraining the said defendant, and each of them, and their and each of their agents, attorneys, servants, employes and workmen, and any person or persons acting in aid or assistance of them, or any of them, from printing, reprinting, publishing, completing, copying, executing, finishing, vending, or giving away either directly or indirectly any of the matter contained in the copyrighted March, July or September 1901 editions of the Reference Book of your

plaint, 17, orators without the consent of your orators as the proprietors thereof, and from printing, reprinting, publishing, vending or giving away any copies of the July 1901, or the contemplated January 1902 edition of the Reference Book of the said Lumbermen's Credit Association, or any part thereof, or any book or edition of any book like, or substantially like, either in whole or in part, the said copyrighted editions of your orators' said Reference Book, or any of them, or any book or edition of any book copied or pirated in whole or in part from the said copyrighted editions of your orators' said Reference Book or any of them.

And may it please Your Honors to grant unto your orators the writ of subpoena in chancery, issuing out of and under the seal of this Honorable Court, requiring the defendants, Lumbermen's Credit Association, William Clancy and Burton W. Stadden, and each of them, at a certain day, and under a certain penalty therein to be specified, to be and appear before this Honorable Court, and then and there to answer all and singular the allegations herein contained and to stand
18 to and abide by and perform such order and decree herein as to your Honors shall seem meet and agreeable to equity and good conscience.

And your orators will ever pray.

MARY B. DUN,
ROBERT DUN DOUGLASS,
FRANCIS L. MINTON and
WALTER D. BUCHANAN,
Executors and Trustees under the will of Robert G. Dun, deceased.

By HOYNE, O'CONNOR & HOYNE, and
EDWIN F. ABBOTT,
their solicitors.

HOYNE, O'CONNOR & HOYNE,
EDWIN F. ABBOTT,
Solicitors for said complainants, and of counsel.

19 United States of America,
Northern District of Illinois,
Northern Division. } ss.

Bill of filed 1902

IN THE

CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the will of Robert G. Dun, deceased,

vs.

The Lumbermen's Credit Association, William Clancy and Burton W. Stadden, Defendants.

State of Illinois }
County of Cook. } ss.

F. E. Griswold, being duly sworn, deposes and says that he is the agent in this behalf of the complainants in the above entitled cause, and that he has read the foregoing bill of complaint and knows the contents thereof and that the same is true of his own knowledge, except as to the matters which are therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

F. E. GRISWOLD.

Subscribed and sworn to before me this 17th day of January, A. D. 1902.

SAMUEL GRODINSKY,
Notary Public.

(Seal)

plaint, 17. 20 10 cent Revenue stamp. A 2
Class A. XXc. No. 1672.
Library of Congress, to wit:
Be It Remembered,
That on the twenty-fourth day of January, 1901,
R. G. Dun & Company , of
New York, N. Y., have deposited in this office the title of a Book, the title of which is in the following words, to wit:
The Mercantile Agency Reference book (and key) containing ratings of Merchants, Manufacturers and Traders Generally throughout the United States & Canada. March, 1901. Vol. 132.
R. G. Dun & Co., New York.
The right whereof they claim as authors and proprietors in conformity with the laws of the United States respecting Copyrights.
Office of the Register of Copyrights.
Washington, D. C.

HERBERT PUTNAM,
Librarian of Congress.
By THORWALD SOLBERG,
Register of Copyrights.

Written S. T. DeF.
Revised J. W. C. (Seal)
Entered M. C. T.
Mailed M. C.

21 10 cent Revenue stamp. A 2
Class A. XXc. No. 9907.
Library of Congress, to wit:
Be It Remembered,
That on the twenty-second day of May, 1901
R. G. Dun & Company, of
New York, N. Y., have deposited in this Office the title of a Book, the title of which is in the following words, to wit:
The Mercantile Agency, Reference book (and key) containing ratings of Merchants, Manufacturers and traders generally, throughout the United States & Canada. July, 1901—Vol. 133.
R. G. Dun & Co., New York.
the right whereof they claim as proprietors in conformity

with the laws of the United States respecting Copyrights. Bill fil 19
Office of the Register of Copyrights,
Washington, D. C.

HERBERT PUTNAM,
Librarian of Congress.
By THORWALD SOLBERG,
Register of Copyrights.

Written L. S.
Revised J. W. C. (Seal)
Entered M. C. T.
Mailed M. C.

22 Class A. XXc. No. 14332. A 2.
Library of Congress to wit:
Be It Remembered,
That on the fifth day of August, 1901,
R. G. Dun and Company, of
New York, N. Y., have deposited in this Office the title of a Book, the title of which is in the following words, to wit:
The Mercantile Agency reference book (and key) containing ratings of merchants, manufacturers and traders generally, throughout the United States & Canada Etc. September, 1901. Vol. 134.
R. G. Dun & Co.
New York.
the right whereof they claim as proprietors in conformity with the laws of the United States respecting Copyrights.
Office of the Register of Copyrights,
Washington, D. C.

HERBERT PUTNAM,
Librarian of Congress.
By THORWALD SOLBERG,
Register of Copyrights.

(Seal)
Written E. M. H.
Revised J. W. C.
Entered M. C. T.
Mailed W. J. P.

(Endorsed) Filed Jan. 17, 1902. S. W. Burnham Clerk.

23 And on to-wit: the twenty-third day of January, 1902, a certain Chancery Subpoena issued out of the clerk's office of said Court directed to the marshal of said District to Execute, Which said subpoena together with the Memorandum thereto attached and the marshal's return thereon endorsed is in the words and figures following to-wit:

24 United States of America,
Northern District of Illinois, } ss.
Northern Division.

The United States of America. To Lumbermen's Credit Association, William Clancy and Burton W. Stadden, Greeting:

We Command You and Every of You, That you appear before our Judges of our Circuit Court of the United States of America, for the Northern District of Illinois, at Chicago, in the Northern Division of said District on the first Monday in the Month of March next, to answer the bill of complaint of Mary B. Dun, et al. this day filed in the Clerk's office of said Court, in said City of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default. To the Marshall of the Northern District of Illinois to Execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States of America, at Chicago aforesaid, this 23rd day of January in the Year of our Lord one thousand nine hundred and two, and of our Independence the 126th year.

S. W. BURNHAM,
Clerk.

(Seal)

MEMORANDUM.

The above named defendants are notified that unless they and each of them shall enter their appearance in the Clerk's office of said Court, at Chicago aforesaid, on or before the day to which the above Writ is returnable, the complainant's bill will be taken against them as confessed, and a decree entered accordingly.

S. W. BURNHAM,
Clerk.

25 MARSHAL'S RETURN.

United States of America, }
Northern District of Illinois, } ss.

I have served the within writ within my district in the following manner to-wit:

Upon the Lumbermen's Credit Association by reading the same to and within the presence and hearing of William Clancy President of said Association, at the same time delivering to him personally a true copy thereof on January 23rd, 1902.

Also upon William Clancy and Burton W. Stadden, by delivering to each of them personally a true copy thereof this 23rd day of January. A. D. 1902.

JOHN C. AMES,
U. S. Marshal.
By G. M. WHERRITT,
Deputy.

(Endorsed) Filed Jan., 25, 1902. S. W. Burnham, Clerk.

26 And on to-wit: the twelfth day of April, 1902, came the defendant, Lumbermen's Credit Association by its solicitors Messrs. Atwood and Pease and filed in the clerk's office of said Court its certain Answer in words and figures following to-wit:

02. 27 ANSWER LUMBERMENS CREDIT ASSOCIATION

United States of America
Northern District of Illinois
Northern Division

IN THE CIRCUIT COURT OF THE UNITED STATES

For the Northern District of Illinois.

Northern Division.

Mary B. Dun, Robert Dun Douglas, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the will of Robert G. Dun, deceased,

vs.

Lumbermen's Credit Association, William Claney and Burton W. Stadden.

The answer of the Lumbermen's Credit Association, defendant, to the Bill of Complaint of the above named complainants.

This defendant now and at all times hereafter, saving and reserving unto itself all benefit or advantage that may be had or taken to the manifold uncertainties and insufficiencies of said bill, for answer thereto, admit that the defendant, the Lumbermen's Credit Association, is a corporation organized and existing under the laws of the State of Illinois, and as such is a resident of the State of Illinois, having its principal office in the City of Chicago, in said District; that the complainants under the firm name of R. G. Dun & Co. carry on the business known as the R. G. Dun & Co. Mercantile Agency, the object of which is to collect, record and preserve information concerning the business standing and credit of merchants, manufacturers and traders throughout the
28 United States, Canada and the British Provinces, and to communicate this information to their subscribers.

Further answering this defendant says, that it is not advised as to when the said business was established by the complainants' predecessors, nor as to the information

gathered and preserved by them, nor as to the transfer of the records of such information and the good will of the business to the complainants; that they have no knowledge as to when Robert G. Dun became connected with the firm of R. G. Dun & Co., nor when he departed this life, nor whether he left a last will and testament, which was duly admitted to Probate in the Surrogate Court of the City, County and State of New York, in December, 1900, and that they have no knowledge as to the provisions of said will, nor as to whether the complainants qualified as executors and trustees under said will, and therefore neither admit nor deny the same.

This defendant further answering admits that the complainants and said R. G. Dun & Co. have published a reference book in January, March, July and September of each year for a number of years; that the editions of said reference book contain the names, business and the addresses of one million, or more, different persons, firms and corporations engaged in business in the United States, Canada and British Provinces; that affixed to many of such names were estimates of the pecuniary worth and general credit of such persons, firms and corporations; and that such reference books were published and the business of the complainants carried on at considerable expense, but these defendants deny that all the information contained in said reference books was gathered or secured by the complainants from original sources of information, on the contrary thereof, this defendant avers on information and belief, that the complainants in compiling their said reference books necessarily and regularly employed and used a large number of other reference books and directories, as well as bulletins, showing legal proceedings, judgments, mortgages, conveyances, etc., in the
29 same manner as do the defendants and all other commercial or mercantile agencies; that as to the allegation in said bill contained relating to the subject of copyrights and proceedings had or taken by complainants and their predecessors, R. G. Dun & Co., in that regard, this defendant neither admits nor denies the same, but calls for strict proof thereof and of each allegation with respect thereto.

Further answering this defendant admits that the defendant, the Lumbermen's Credit Association, is now, and has been for about eight years last past, engaged in the business

of printing and publishing a certain reference book containing the names, addresses and ratings of wholesale and retail dealers in the lumber and kindred trades throughout the United States and the Province of Manitoba: that prior to 1893, at which time defendant was incorporated, the defendant, William Clancy, under the name of Lumbermen's Mercantile Association, carried on the business of printing and publishing said reference book, which is now owned by said defendant, Lumbermen's Credit Association, and prior thereto William Clancy and M. D. Talcott carried on the business under the same name.

Further answering this defendant admits that during the time that the defendant, William Clancy, personally and also in connection with M. D. Talcott, carried on the said business, before the formation of said defendant Company, they published said reference book semi-annually in January and July of each year, but denies that said William Clancy and M. D. Talcott, or either of them, ever compiled and made up said reference books wholly, or in great part, or in any part whatever, from the information contained in the reference books previously issued by the predecessors of the complainants, or without making any original investigations or inquiries, for the information necessary to the composing, compiling and publishing of such a book.

Further answering this defendant denies that the Lumbermen's Credit Association in publishing its said reference books as aforesaid, or William Clancy or Burton W. Stadden, or any or either of them, have at any time pirated from the reference books of the complainants' or their predecessors; this defendant admits that it has published its said reference books semi-annually in January and July of each year, but denies that it has compiled and made up the said reference books, or any of them, wholly or in great part, or in any part whatever, from the information contained in the reference books previously published by the complainants and their predecessors, or without making any original investigations or inquiries necessary to the composing, compiling and publishing of such a book; and denies that the edition of said reference book printed and published by said Lumbermen's Credit Association in July, 1901, was compiled and made up wholly, or in great part, or in any part whatever from the information contained in the March, 1901, edition, or any other edition of the reference books of the complainants, or their predecessors, without making any original investiga-

tions or inquiry for the information necessary to the composing, compiling and publishing of such a book. Ans A

Further answering this defendant, denies that the January, 1902, edition of the reference book of said Lumbermen's Credit Association, printed and published by it, was wholly, or in great part, or in any part whatever, compiled and made up from the information contained in the March, July and September 1901 editions of the said reference books issued by the complainants, or without making any original investigation or inquiry for the information necessary to the composing, compiling and publishing of said book.

Furthering answering this defendant admits that the reference books of the said Lumbermen's Credit Association contain certain letters and figures used to indicate the
31 financial worth, and the habits of pay and other information affecting the credit of persons, firms and corporations named therein, and that in some instances the same letters are used, which are used in complainants' reference book, as a part of their key, but that in no instance does the same letter indicate the same amount, but in several instances the same letter indicates a very different amount of capital rating.

Further answering this defendant denies that in compiling the July 1901 reference book of said Lumbermen's Credit Association, that in some instances names of towns and in other instances names and ratings of persons, firms and corporations were copied from the complainants' March 1901 reference book, or that in other instances it used the ratings in the complainants' said March, 1901 book in fixing the ratings in its said July, 1901 book or that the ratings shown in the complainants' said March, 1901, book were inserted in its July 1901 book with slight and colorable changes, or otherwise, or that this defendant intended to copy, or did copy, ratings from the complainants' said March, 1901, book.

Further answering this defendant denies that in compiling said January, 1902, edition of the said Lumbermen's Credit Association reference book, it copied in some instances, names of towns, and in other genuine and fictitious names and ratings of persons, firms and corporations from the said complainants' 1901 reference books, or that in other instances they, or either of them, used the ratings in complainants' September 1901 book in fixing the ratings in the January 1902 book of said Lumbermen's Credit Association,

1902. or that they or either of them, inserted the same in its said January, 1902, book with slight and colorable changes, or otherwise, or that they, or either of them, intended to, or did, copy the ratings appearing in complainants' said September, 1901, book, or that they, or either of them copied letters and figures therefrom, thereby giving different ratings than complainants.

32 Further answering this defendant admits that they were never subscribers for the complainant's reference book, or that they ever entered into any contract with the complainants in respect to the other reference books.

Further answering this defendant denies that the defendant, William Clancy, as president of said Lumberman's Credit Association, and said defendant, Burton W. Stadden, as its Secretary, have joined with this defendant in taking the aforesaid information from the complainants' said reference books, and publishing and attempting to publish the same in its reference books.

Further answering this defendant denies that they have copied the names of towns, persons, firms or corporations, letters, figures or ratings into said reference books, or any of them, from the complainants' reference book, or books, or that they have done any wrongful act in connection with the printing and publishing of said reference books or any of them.

Further answering this defendant states, upon information and belief, that many of the capital ratings as to amounts appearing in the January and July 1901 and previous editions of the reference book issued by said Lumbermen's Credit Association, were copied by complainants in their respectively following editions of the reference books issued by them, and transferred into subsequent editions of such books, so that the reference book issued by the complainants in September 1901, contains a large percentage of references copied by the complainants directly or indirectly, from the reference books issued by this defendant, in meaning and effect the characters used by this defendant in its books being translated into the characters used by the complainants into the same amounts, or to so nearly the same amounts as possible, and this defendant charges that such use by the complainants of this defendant's book was unauthorized and without color of right and was with bad faith on part of

33 complainants, and with the intent by them to use the labors of this defendant and to pirate the same and this

defendant avers that for this reason, the complainants are not seeking equity with clean hands. Answ Apr

Further answering this defendant avers that the names of towns, persons, firms and corporations, letters, characters and symbols in the key used by said complainants and appearing in their said reference books are not subject of copyright.

Further answering this defendant denies, on information and belief, that complainants copyrighted the said reference books issued by them in the years 1889, 1900 and 1901 respectively, or that they filed copies of said books with the Librarian of Congress at Washington in the District of Columbia before the issuing and publishing of said books, or that they filed with said Librarian a copy of the title of each of said books as required by law, or paid the necessary recording fee therefor, or that they took the necessary and proper steps to comply with the conditions and provisions of the revised statutes of the United States regarding copyright or that they have obtained copyrights of the United States for the said reference books of March, July and September, 1901, as alleged in their said bill.

Further answering this defendant denies that said William Clancy during the time that he owned and carried on the said business before the incorporation of the Lumbermen's Credit Association, compiled and made up said reference books issued by him in January and July of each year wholly, or in great, or in any part whatever, from the information contained in the reference books previously issued by the complainants' predecessors, without making original investigation or inquiry for the information necessary for the composing, compiling and publishing said books, or that it has continued to pirate or copy from the reference books of the complainants' predecessors during the time this defendant has carried on said business, in composing, compiling and publishing its reference books in January and July or
34 each year, or that defendants, William Clancy and Burton W. Stadden, have joined with this defendant in taking information from the reference books of the complainants and publishing, or attempting to publish the same in the reference books issued by said Lumbermen's Credit Association.

Further answering this defendant says that said Lumbermen's Credit Association is a special mercantile agency devoted to the lumber and kindred trades, that the business now

d 1902. carried on by said association was established twenty-six years ago; that said association collects, collates and preserves information concerning the financial worth, habits of pay and methods of doing business of manufacturers and dealers in lumber and kindred trades throughout the United States and Manitoba; that said association has its correspondents or representatives, numbering many thousands, in all the principal cities and towns in the United States and Manitoba, from whom information and reports are received; that it also receives statements from manufacturers, dealers and users of lumber and kindred lines, and that it also has several travelers soliciting business and gathering information; that during the twenty-six years aforesaid, there has been gathered, collated and preserved, at a great expense, more than one million reports conecrning the financial worth, habits of pay and business methods of persons, firms and corporations engaged in the lumber business and kindred lines in the United States and Manitoba, and that said reports and information which it now has on file are of great value and worth to said association; that said association has from twenty-six to thirty-five employees, and occupies over fifteen hundred square feet of office room; that it receives on an average from 300 to 500 letters daily; that all of the information so gathered and preserved by said association is confidential, and is gathered and preserved for the purpose of furnishing confidential reports to its subscribers.

35 Further answering this defendant says, that another means of furnishing said information to its subscribers is a reference book, which is published by said association semi-annually, in January and July of each year; that said information is compiled in said reference books by means of certain letters, figures and characters, commonly called a "key," adopted and used in the said business since 1876, a copy of which "key" is submitted herewith as Exhibit A for the inspection of the Court.

Further answering this defendant says, that another source of original information is by means of oral and written reports from its subscribers as to their dealing and experience with the different lumber users throughout the United States and Manitoba, and that still another source of information is through its collection department, which handles a very large number of claims, through which it comes directly in contact with a large number of lumber users and dealers, and gathers much valuable information as to their habits of

pay and methods of doing business; that still another source of information is through the trade journals, periodicals, law bulletins, daily papers and five or six clipping bureaus; that all of the information thus gathered by said association is collated and preserved by it in its records and files, except where the same is casually lost or mislaid, or through lapse of time has ceased to be looked after and cared for by the defendant's agents and employes as being too old to be of any value. Answer April

Further answering this defendant says, that the reference book published by said association contains upwards of sixty thousand names of persons, firms and corporations engaged in the lumber and associated trades throughout the United States and Manitoba, and that a large majority of such names have appeared in the reference book issued by the defendant association for eight or ten years, and that not more
36 than ten per cent. of the names or ratings are changed in each revision of said reference book; that said book is revised and published semi-annually in January and July of each year; that for each revision of said book from thirty to forty thousand inquiries are sent to correspondents, representatives, subscribers and travelers for information, on blanks especially prepared for that purpose, to each and every town revised, and the information received in reply thereto is used in connection with the verbal and written answers to inquiries and information previously received on file, in fixing the ratings contained in said reference book.

Further answering this defendant says that the reference book issued by said association is confined to the lumber and associated trades in the United States and Province of Manitoba, while the reference book issued by complainants embraces all kinds and classes of business, and covers the United States, Canada, British Provinces and North America.

Further answering this defendant says, that the general scope and classification of its reference book is entirely different from the reference book issued by complainants; that its reference book is devoted entirely to the lumber and associated trades and is compiled and arranged especially to meet the needs and requirements of the persons, firms and corporations manufacturing and dealing in lumber and kindred lines; that said defendant's reference book contain many names and ratings of lumber dealers and manufacturers not contained in complainants' reference book; that defendant's

iled
2, 1902.

book gives the name of a bank and attorney under each town, which complainants' do not do in their reference book; that defendant's book also contains a shipping guide, express directory, attorney's directory, population of the different cities and towns, freight rate columns, marginal State index and a blank margin for corrections and notations, which complainants' reference book does not contain.

Further answering this defendant says, that the ar-
37 rangements and classification of lumber dealers in defendant's reference book is entirely different from complainant's reference book; that the classification in defendant's reference book show who the manufacturers, wholesale and retail dealers are, and whether they manufacture and deal in other than pine lumber, and in cases where the person, firm or corporation has a number of country yards, defendant's reference book gives the location of the purchasing department, none of which information is contained in the reference book issued by complainants.

Further answering this defendant says that in some instances the same letters are used in defendant's "key" that complainants use in their "key," but that in no instance does the same letter indicate the same amount which said person, firm or corporation are reputed to be worth, and that there is a very wide difference in the amounts represented by the same letters used in complainants' and defendant's "key"; that defendant has no letter indicating an amount above one hundred thousand dollars, while complainants' "key" indicates amounts up to one million dollars; that the meaning of defendant's "key" and in the information intended to be conveyed thereby is entirely different from complainants' "key", and that in no instance does the same letter or figure indicate or convey the same amount of information, that the "key" to the reference book of said Lumbermen's Credit Association indicates the habit of pay as follows, viz: "prompt pay", "medium pay", "slow pay", and "very slow pay", while complainant's "key" indicates a limit of credit which it is supposed may be safely extended to persons, firms or corporations; that defendant's "key" indicates also all manner of delinquencies, insolvencies, encumbrances, transfers, judgments, bills of sale, chattel mortgages, complaints, and so on, numbering in all one hundred thirteen specific items of information, indicating the business standing or condition of persons, firms or corporations appearing in said reference

book, while complainant's "key" refers to only nineteen (19) items. Answer, April

38 And this defendant further answering denies, that the complainants are entitled to the relief, or any part thereof, in the said bill of complaint demanded, and prays the same advantage of this answer as if it had pledged or demurred to the said Bill of Complaint, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

LUMBERMEN'S CREDIT ASSOCIATION
By ATWOOD & PEASE,
its solicitors.

ATWOOD & PEASE
Solicitors for Lumbermen's Credit Association.

39 EXHIBIT A. Exhibit to re book

Key to Reference Book and Correction Sheet.

AAAA		Very High.		BC	From	10,000 to	15,000
AAA	Over	$100,000		D	"	5,000 to	10,000
AA	From	75,000 to	$100000	E	"	3,000 to	5,000
A	"	50,000 to	75000	F	"	2,000 to	3,000
AB	"	35,000 to	50000	EF	"	1,000 to	2,000
B	"	25,000 to	35000	G	"	500 to	1,000
C	"	15,000 to	25000	H	"	100 to	500

Numbers to be Reported.

1 Prompt Pay.
2 Medium Pay.
3 Slow Pay.
3½ Very Slow Pay.
4. Parties that you decline credit, on account of trouble in collecting and for various reasons.
5 Pay notes, but slow on open accounts.
6 Draft returned unpaid.
7 If interested inquire at office.
8 Recently commenced business.
9 Out of business.
10 conveyed reals estate.
11 Accepted draft or note returned unpaid.
12 Asking general extension.
13 Party buys with questionable intentions.

A—Key
rence
tc.

14 Intemperate.
15 Does not attend to business.
16 Suit.
17 Reported failed.
18 Sold or selling out.
19 Asking temporary extension of one or more.
20 Partnership dissolved.
21 Deceased.
22 Closing or selling out.
23 Chattel mortgage.
24 Works with borrowed capital.
25 Considered weak.
26 Left town.
27 Property not known to be in his or her name.
28 Pay when the law compels them to.
29 Pay when they get ready.
30 Reported no property within the reach of law.
31 Will not settle.
32 Inclined to be dishonest or tricky.
33 Complain of quality of stock or shortage and make deductions.
33½ Reported by one authority as complaining of quality of stock, or claiming shortage and making deduction therefor.
34 Offering to compromise.
35 Continues in business.
36 Burned out.
36½ Partially burned out.
37 Fully insured.
38 No insurance.
38½ Partially insured.
39 Reported insolvent.
40 40 Compromised.
41 Filed petition in bankruptcy.
42 Suspended.
43 Reported assigned.
44 Will not accept drafts.
45 Slow pay but considered responsible.
46 Failed recently.
47 Honest and industrious.
48 Note or accepted draft protested.
49 We have late report at office.
49½ Account runs 30 days past due.

50 Account runs 60 days past due.
51 Account runs 90 days past due.
52 Account runs 4 months past due.
53 Account runs 6 months past due.
54 Account runs 9 months past due.
55 Account runs one year past due.
56 Attached.
57 Name left out of book.
58 Will not answer letters.
59 Have asked for statement of his or their business.
60 Refuse to give statement.
61 Have sent for late report.
62 Sued and judgment rendered.
63 Retail dealers Association say not legitimate lumber dealers; are not entitled to buy at wholesale.
64 Caution advised.
65 Hard to collect from.
66 Collection at office not paid.
67 Collection at office paid.
67½ Disputed collection at office paid.
68 Sued on disputed account.
69 Rating suspended.
70 Rating withdrawn.
71 Closed by execution.
72 Real Estate or chattel mortgage released.
74 We have his or their statement at office.
75 Poor business qualifications.
76 Sometimes sued to compel settlement.
77 Real estate mortgaged.
78 Receiver appointed.
79 Called meeting of creditors.
80 Reported refused shipment because market declined after order was placed.
81 Reported cancelled order after shipment was made.
82 Will not pay interest on past due accounts.
83 Will not give references.
84 Refuse to pay exchange.
86 Accepted draft or note runs 30 to 60 days past due.
87 Accepted draft or note runs 60 to 90 days past due.
88 Accepted draft or note runs 3 to 6 months past due.
89 Should not be sold without inquiry at office.
90 Should be sold with caution.
91 Liquidating.

←Key
nce
c.

92 Mortgage foreclosed.
93 Mortgage discharged.
94 Given trust deed.
95 Compromising.
96 Limited capital, considered good for small line of credit.
41 97 Some members sell, others refuse credit.
98 Members will please give their experience, favorable or unfavorable, on this party or parties.
99 Pay and credit not established.
100 No information at office to base rating or credit upon.
101 Claim by statement to be worth.
102 Getting behind in payments.
103 Collection note placed in our hands and paid 30 to 60 days past due.
104 Collection note placed in our hands and paid 60 days to 4 months past due.
105 Collection note placed in our hands and paid 4 to 6 months past due.
106 Collection open account placed in our hands and paid 30 to 60 days past due.
107 Collection open account placed in our hands and paid 60 days to 4 months past due.
108 Collection open account placed in our hands and paid 4 to 6 months past due.
109 Succeeded by.
110 Incorporated.
111 Confessed judgment.
112 Receiver applied for.
113 Given bill of sale.

ABBREVIATIONS.

Agl Impl	Agricultural Implements	L	Lumber
D. G.	Dry Goods	P. M.	Planing Mill
Furn	Furniture	S. D. & B.	Sash, Doors and Blinds
Gr	Grain	Sal	Saloon
Gro	Groceries	S. M.	Saw Mill
G. S.	General Store	Shg. Mill	Shingle Mill
Hdwe	Hardware	Shgs	Shingles
H. W. L.	Hardwood Lumber		

COLLECTIONS PROMPTLY MADE AT THIS OFFICE.

(Endorsed) Filed April 12, 1902 Marshall E. Sampsell Clerk.

42 And afterwards to-wit: on the tenth day of May, 1902, came William Clancy and Burton W. Stadden by their solicitors Messrs. Atwood and Pease and filed in the clerk's office of said Court in said entitled cause their certain Answer in words and figures following to-wit:

43 ANSWER OF WILLIAM CLANCY AND BURTON W. STADDEN.

United States of America,
Northern District of Illinois,
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES

For the Northern District of Illinois

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the will of Robert G. Dun, deceased.

vs

Lumbermen's Credit Association, William Clancy and Burton W. Stadden.

The answer of William Clancy and Burton W. Stadden, defendants, to the Bill of Complaint of the above named complainants:

These defendants now and at all times hereafter, saving and reserving unto themselves all benefit or advantage that may be had or taken to the manifold uncertainties and insufficienties of said bill, for answer thereto, admit that the defendant, the Lumbermen's Credit Association, is a corporation organized and existing under the laws of the State of Illinois, and as such is a resident of the State of Illinois, having its principal office in the City of Chicago, in said District; that the complainants, under the firm name of R. G. Dun & Co., carry on the business known as the R. G. Dun & Co. Mercantile Agency, the object of which is to

1 May collect, record and preserve information concerning the business standing and credit of merchants, manufacturers and traders throughout the United States, Canada and the British Provinces, and to communicate this information to their subscribers.

44 Further answering, these defendants say, that they are not advised as to when the said business was established by the complainants' predecessors, nor as to the information gathered and preserved by them, nor as to the transfer of the records of such information and the goodwill of the business to the complainants; that they have no knowledge as to when Robert G. Dun became connected with the firm of R. G. Dun & Co., nor when he departed this life, nor whether he left a last will and testament, which was duly admitted to Probate in the Surrogate Court of the City, County and State of New York, in December 1900, and that they have no knowledge as to the provisions of said will, nor as to whether the complainants qualified as executors and trustees under said will, and therefore neither admit nor deny the same.

These defendants further answering, admit that the complainants and said R. G. Dun & Co. have published a reference book in January, March, July and September of each year for a number of years; that the editions of said reference book contain the names, business and addresses of one million or more different persons, firms and corporations engaged in business in the United States, Canada and British Provinces; that affixed to many of such names were estimates of the pecuniary worth and general credit of such persons, firms and corporations; and that such reference books were published and the business of the complainants carried on at considerable expense, but these defendants deny that all the information contained in said reference books was gathered or secured by the complainants from original sources of information, on the contrary thereof, these defendants aver on information and belief, that the complainants in compiling their said reference books necessarily and regularly employed and used a large number of other reference books and directories, as well as bulletins, showing legal proceedings, judgments, mortgages, conveyances, etc., in the same manner as do the defendants and all other commercial and mer-

45 cantile agencies; that as to the allegations in said bill contained relating to the subject of copyrights and pro-

ceedings had or taken by complainants and their predecessors, R. G. Dun & Co., in that regard, these defendants neither admit nor deny the same, but call for strict proof thereof and of each allegation with respect thereto. Ans 10

Further answering these defendants admit that the defendant, the Lumbermen's Credit Association, is now, and has been for about eight years last past, engaged in the business of printing and publishing a certain reference book containing the names, addresses and ratings of wholesale and retail dealers in the lumber and kindred trades throughout the United States and the Province of Manitoba; that prior to 1893, at which time said defendant, the Lumbermen's Credit Association, was incorporated, the defendant, William Clancy, under the name of Lumbermen's Mercantile Association, carried on the business of printing and publishing said reference book, which is now owned by said defendant, Lumbermen's Credit Association, and prior thereto William Clancy and M. D. Talcott carried on the business under the same name.

Further answering these defendants admit that during the time that the defendant, William Clancy, personally and also in connection with M. D. Talcott, carried on the said business, before the formation of said defendant Company, they published said reference book semi-annually in January and July of each year, but deny that said William Clancy and M. D. Talcott, or either of them, ever compiled and made up said reference books wholly, or in great part, or in any part whatever, from the information contained in the reference books previously issued by the predecessors of the complainants, or without making any original investigations or inquiries, for the information necessary to the composing, compiling and publishing of such a book:

Further answering these defendants deny that the Lumbermen's Credit Association in publishing its said reference books as aforesaid, or said William Clancy or Burton W. Stadden, or any or either of them, have at any time pirated from the reference books of the complainants' or their predeces-
46 sors; these defendants admit that said Lumbermen's Credit Association has published its said reference books semi-annually in January and July of each year, but deny that it has compiled and made up the said reference books, or any of them, wholly or in great part, or in any part whatever, from the information contained in the reference books

2d May previously published by the complainants and their predecessors, or without making any original investigations or inquiries necessary to the composing, compiling and publishing of such a book; and they deny that the edition of said reference book printed and published by said Lumbermen's Credit Association in July, 1901, was compiled and made up wholly, or in great part, or in any part whatever from the information contained in the March, 1901, edition, or any other edition of the reference books of the complainants, or their predecessors, without making any original investigations or inquiry for the information necessary to the composing, compiling and publishing of such a book.

Further answering these defendants deny that the January, 1902, edition of the reference book of the said Lumbermen't Credit Association printed and published by it, was wholly, or in great part, or in any part whatever, compiled and made up from the information contained in the March, July and September, 1901, editions of the said reference books issued by the complainants, or without making any original investigation or inquiry for the information necessary to the composing, compiling and publishing of said book.

Further answering these defendants admit that the reference books of the said Lumbermen's Credit Association contain certain letters and figures used to indicate the financial worth, and the habits of pay and other information effecting the credit of persons, firms and corporations named therein, and that in some instances the same letters are used, which are used in complainants' reference book, as a part of their key, but that in no instance does the same letter indicate the same amount, but in several instances the same letter indicates a very different amount of capital rating.

Further answering these defendants deny that in compiling the July 1901 reference book of said Lumbermen's Credit Association, in some instances names of towns and in other instances names and ratings of persons, firms and corporations were copied from the complainants' March, 1901, reference book, or that in other instances it used the ratings in the complainants' said March, 1901, book in fixing the ratings in its said July, 1901, book, or that the ratings shown in the complainants said March, 1901, book were inserted in
47 its July, 1901, book with slight and colorable changes, or otherwise, or that this defendant intended to copy, or did copy, ratings from the complainants' said March, 1901, book.

Further answering, these defendants deny that in compiling said January, 1902, edition of the said Lumbermen's Credit Association reference book, they copied in some instances, names of towns, and in other genuine and fictitious names and ratings of persons, firms and corporations from the said comlainants' 1901 reference books, or that in other instances they, or either of them, used the ratings in complainants' September, 1901, book in fixing the ratings in the January, 1902, book of said Lumbermen's Credit Association, or that they, or either of them, inserted the same in its said January, 1902, book with slight and colorable changes, or otherwise, or that they, or either of them, intended to, or did, copy the ratings appearing in complainants' said September, 1901, book, or that they or either of them, copied letters and figures therefrom, thereby giving different ratings than complainants. Answ 10.

Further answering these defendants admit that they were never subscribers for the complainants' reference book, or that they ever entered into any contract with the complainants in respect to the other reference books.

Further answering these defendants deny that the defendant, William Clancy, as president of the said Lumbermen's Credit Association, and said defendant, Burton W. Stadden, as its Secretary, have joined with said defendant in taking the aforesaid information from the complainants' said reference books, and publishing and attempting to publish the same in its reference books.

Further answering these defendants deny that they have copied the names of towns, persons, firms and corporations, letters, figures or ratings into said reference books, or any of them, from the complainants' reference book, or books, or that they have done any wrongful act in connection
48 with the printing and publishing of said reference books or any of them.

Further answering these defendants state, upon information and belief, that many of the capital ratings as to amounts appearing in the January and July 1901 and previous editions of the reference book issued by said Lumbermen's Credit Association, were copied by complainants in their respectively following editions of the reference books issued by them, and transferred into subsequent editions of such books, so that the reference book issued by the complainants in September, 1901, contains a large percentage of references

May copied by the complainants directly or indirectly, from the reference books issued by defendant, Lumbermen's Credit Association, in meaning and effect the characters used by defendant, Lumbermen's Credit Association, in its book being translated into the characters used by the complainants into the same amounts, or to so nearly the same amounts as possible, and these defendants charge that such use by the complainants of said book of said Lumbermen's Credit Association, was unauthorized and without any color of right and was with bad faith on part of complainants, and with the intent by them to use the labors of these defendants and to pirate the same and these defendants aver that for this reason, the complainants are not seeking equity with clean hands.

Further answering these defendants aver that the names of towns, persons, firms and corporations, letters, characters and symbols in the key used by said complainants and appearing in their said reference books are not subject of copyright.

Further answering these defendants deny on information and belief, that complainants copyrighted the said reference books issued by them in the years 1889, 1900, and 1901 respectively, or that they filed copies of said books with the Librarian of Congress at Washington in the District of Columbia before the issuing and publishing of said books, or that they filed with said Librarian a copy of the title of each of said books as required by law, or paid the necessary
49 recording fees thereof, or that they took the necessary and proper steps to comply with the conditions and provisions of the revised statutes of the United States regarding copyright, or that they have obtained copyrights of the United States for the said reference books of March, July and September 1901, as alleged in their said bill.

Further answering these defendants deny that said William Clancy during the time that he owned and carried on the said business before the incorporation of the Lumbermen's Credit Association, compiled and made up said reference books issued by him in January and July of each year wholly, or in great part, or in any part whatever, from the information contained in the reference books previously issued by the complainants' predessors, without making original investigations or inquiry for the information necessary for the composing, compiling and publishing said books, or that said

Lumbermen's Credit Association has continued to pirate or copy from the reference books of the complainants' predecessors during the time said defendant has carried on said business, in composing, compiling and publishing its reference books in January and July of each year, or that these defendants, William Clancy and Burton W. Stadden, have joined with said defendant, Lumbermen's Credit Association, in taking information from the reference books of the complainants and publishing, or attempting to publish the same in the reference books issued by said Lumbermen's Credit Association. Answ 10

Further answering these defendants say that said Lumbermen's Credit Association is a special mercantile agency devoted to the lumber and kindred trades, that the business now carried on by said association was established twenty-six years ago; that said association collects, collates and preserves information concerning the financial worth, habits of pay and methods of doing business of manufacturers and dealers in lumber and kindred trades throughout the United States and Manitoba; that said association has its correspondents or representatives, numbering many thousands, in all the principal cities and town in the United States and Manitoba, from whom information and reports are received; that it also receives statements from manufacturers, dealers and users of lumber and kindred lines, and that it also has several travelers soliciting business and gathering information, that during the twenty-six years aforesaid, there has been gathered, collated and preserved, at a great expense, more than one million reports concerning the financial worth, habits of pay and business methods of persons, firms and corporations engaged in the lumber business and kindred lines in the United States and Manitoba, and that said reports and information which it now has on file are of great value and worth to said association; that said association has from twenty-six to thirty-five employees, and occupies over fifteen hundred square feet of office room; that it receives on an average from 300 to 500 letters daily; that all of the information so gathered and preserved by said association is confidential, and is gathered and preserved for the purpose of furnishing confidential reports to its subscribers.

Further answering these defendants say that another means of furnishing said information to its subscribers is a reference book, which is published by said association semi-annu-

May ally, in January and July of each year; that said information is compiled in said reference books by means of certain letters, figures and characters, commonly called a "key", adopted and used in the said business since 1876, a copy of which "key" is submitted herewith as Exhibit A for the inspection of the Court.

Further answering these defendants say that another source of original information used by said Lumbermen's Credit Association is by means of oral and written reports from its subscribers as to their dealing and experience with the different lumber users throughout the United States and Manitoba, and that still another source of information is through its collection department, which handles a very large number of claims, through which it comes directly
51 in contact with a large number of lumber users and dealers, and gathers much valuable information as to their habits of pay and method of doing business; that still another source of information is through the trade journals, periodicals, law bulletins, daily papers and five or six clipping bureaus; that all of the information thus gathered by said association is collated and preserved by it in its records and files, except where the same is casually lost or mislaid, or through lapse of time has ceased to be looked after and cared for by its agents and employees as being too old to be of any value.

Further answering these defendants say that the reference book published by said association contains upwards of sixty thousand names of persons, firms and corporations engaged in the lumber and associated trades throughout the United States and Manitoba, and that a large majority of such names have appeared in the reference book issued by the defendant association for eight or ten years, and that not more than ten per cent of the names of rating are changed in each revision of said reference book; that said book is revised and published semi-annually in Januuary and July of each year; that for each revision of said book from thirty to forty thousand inquiries are sent to correspondents, representatives, subscribers and travelers for information, on blanks especially prepared for that purpose, to each and every town revised, and the information received in reply thereto is used in connection with the verbal and written answers to inquiries and information previously received on file, in fixing the ratings contained in said reference book.

Answer 10, 1

Further answering these defendants say that the reference book issued by said association is confined to the lumber and associated trades in the United States and Province of Manitoba, while the reference book issued by complainants embraces all kinds and classes of business, and covers the United States, Canada, British Provinces and North America.

Further answering these defendants say that the gen-
52 eral scope and classification of the reference book of said Lumbermen's Credit Association is entirely different from the reference book issued by complainants; that its reference book is devoted entirely to the lumber and associated trades, and is compiled and arranged especially to meet the needs and requirements of the persons, firms and corporations manufacturing and dealing in lumber and kindred lines; that said association's reference book contain many names and ratings of lumber dealers and manufacturers not contained in complainants' reference book; that said association's book gives the name of a bank and attorney under each town, which complainants' do not do in their reference book; that said association's book also contains a shipping guide, express directory, attorneys' directory, population of the different cities and towns, freight rate columns, marginal State index and a blank margin for correction and notations, which complainants' reference book does not contain.

Further answering these defendants say that the arrangements and classification of lumber dealers in the reference book of the Lumbermen's Credit Association is entirely different from complainant's reference book; that the classification in the reference book of the Lumbermen's Credit Association show who the manufacturers, wholesale and retail dealers are, and whether they manufacture and deal in other than pine lumber, and in cases where the person, firm or corporation has a number of country yards, said association's reference book gives location of the purchasing department, none of which information is contained in the reference book issued by complainants.

Further answering these defendants say that in some instances, the same letters are used in said association's "key" that complainants use in their "key", but that in no instance does the same letter indicate the same amount which said person, firm or corporation are reputed to be worth, and that there is a very wide difference in the amounts represented by the same letters used in complainants' and said associa-

d May 53 tion's "key"; that said association has no letter indicating an amount above one hundred thousand dollars, while complainants' "key" indicates amounts up to one million dollars; that the meaning of said association's "key" and the information intended to be conveyed thereby is entirely different from complainant's "key", and that in no instance does the same letter or figure indicate or convey the same amount or information; that the "key" to the reference book of said Lumbermen's Credit Association indicates the habit of pay as follows: viz: "prompt pay", "medium pay", "slow pay", and "very slow pay", while the complainants' "key" indicates a limit of credit which it is supposed may be safely extended to persons, firms or corporations; that the said association's "key" indicates also all manner of delinquencies, insolvencies, encumbrances, transfers, judgments, bills of sale, chattel mortgages, complaints and so on, numbering in all one hundred thirteen specific items of information, indicating the business standing or conditions of persons, firms or corporations appearing in said reference book, while complainants' "key" refers to only nineteen (19) items.

And these defendants further answering deny that the complainants are entitled to the relief, or any part thereof in the said bill of complaint demanded, and pray the same advantage of this answer as if they had pleaded or demurred to the said bill of complaint, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

WILLIAM CLANCY
BURTON W. STADDEN
By ATWOOD & PEASE,
their solicitors.

ATWOOD & PEASE
Solrs for William Clancy & Burton W. Stadden.

54 (Here follows Exhibit A. identical with Exhibit A. set out in the Answer of the Lumbermen's Credit Association not copied here)

(Endorsed) Filed May 10, 1902, Marshall E. Sampsell, Clerk.

55 And afterwards to-wit: on the 24th day of April, 1902, came the complainants in said entitled cause by their solicitor and filed in the clerk's office of said Court in said entitled cause their certain replication to the answer of the Lumbermen's Credit Association in words and figures following to-wit: Replica April

REPLICATION TO THE ANSWER OF LUMBERMEN'S CREDIT ASSOCIATION.

Northern Division,
Northern District of Illinois, } ss.
United States of America,

IN THE

CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois—

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton, and Walter D. Buchanan, Executors and Trustees under the will of Robert G. Dun, deceased,

vs.

Lumbermen's Credit Association, William Clancy and Burton W. Stadden,

} In Chancery

The Replication of Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the Will of Robert G. Dun, deceased, complainants, to the answer of Lumbermen's Credit Association, defendant.

56 These repliants, saving and reserving to themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, Lumbermen's Credit Association, for replication thereto, say that they will aver, maintain and prove their bill of complaint to be true, certain and sufficient in law to be

filed 1902. answered unto; and that the said answer of the said defendant, Lumbermen's Credit Association is uncertain, untrue and insufficient to be replied unto by these repliants without this; that any other matter or thing whatsoever in the said answer of the said Lumbermen's Credit Association contained material and effectual in law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true. All which matters and things these repliants are ready to aver, maintain and prove as this Honorable Court shall direct, and humbly pray as in and by their said bill they have already prayed.

HOYNE, O'CONNOR & HOYNE,
EDWIN F. ABBOTT,
Solicitors for Complainants.

(Endorsed) Filed April 24, 1902, Marshall E. Sampsell, Clerk.

filed 902. 57 And afterwards to-wit: on the 16th day of May, 1902, came the complainants in said entitled cause by their solicitor and filed in the clerk's office of said Court in said cause their certain replication to the answer of William Clancy and Burton W. Stadden in words and figures following to-wit—

REPLICATION TO ANSWER OF WILLIAM CLANCY AND BURTON W. STADDEN.

United States of America, Northern Division. } ss.

IN THE
UNITED STATES CIRCUIT COURT,
for the Northern District of Illinois,
Northern Division.

Mary B. Dun, et al.
vs.
Lumbermen's Credit Association, et al. } In Chancery.

The replication of Mary B. Dun, et al, complainants to the answer of William Clancy and Burton W. Stadden.

These repliants, saving and reserving to themselves now,

and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendants for replication thereunto, say that they will aver, maintain and prove their bill of complaint to be true, certain and sufficient in the law, to be answered unto; and that the said answer of the said defendants is uncertain, untrue and insufficient to be replied unto by these repliants, without this; that any other matter or thing whatsoever, in the said answer contained, material or effectual in the law, to be replied
58 unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied is true. All which matters and things these repliants are ready to aver, maintain and prove as this honorable court, shall direct and humbly pray as in and by their said bill they have already prayed.

Repli Ma

HOYNE, O'CONNOR & HOYNE, and
E. F. ABBOTT,
Solicitors for Complainants.

(Endorsed) Filed May 16, 1902, Marshall E. Sampsell, Clerk.

59 And on to-wit: the 25th day of January, 1902, being one of the days of the regular December term of said Court, 1901, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

Orde 190

ORDER OF JANUARY 25, 1902.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton, and Walter D. Buchanan, Executors and trustees under the will of Robert G. Dun, deceased,	26,143
vs.	
The Lumbermen's Credit Association William Clancy and Burton W. Stadden	

Now on this day come the complainants by Messrs. Hoyne, O'Connor and Hoyne, their solocitors, the defendants being specially represented by Messrs. Atwood and Pease, and the motion of complainants for a temporary restraining order

an. 25. now coming on for hearing and the Court having heard the same and being fully advised in the premises denies said motion and thereupon,

It is Ordered that the motion for an injunction pendente lite herein be, and the same is hereby, referred to Henry W. Bishop, one of the Masters in Chancery of this court, to examine the bill, affidavits and counter affidavits herein, together with the exhibits submitted upon said motion and to take such further proofs as either party may desire to offer and to make report with all convenient speed as to whether such preliminary injunction should issue.

r rule
ss, filed
, 1902.

60 And on to-wit: the 8th day of March, 1902, there was filed in the clerk's office of said Court in said entitled cause a certain Petition for Rule on Witness to produce evidence, which said petition is in the words and figures following to-wit:

61 United States of America, }
Northern District of Illinois. } ss.

IN THE

CIRCUIT COURT OF THE UNITED STATES.

For the Northern District of Illinois.

Mary B. Dun, Robert Dun Douglass, rancis L. Minton and Walter D. Buchanan, Executors and Trustees under the will of Robert G. Dun, deceased,

Complainants.

vs.

The Lumbermen's Credit Association, William Clancy and Burton W. Stadden,

Defendants.

To Messrs. Atwood & Pease, Solicitors for Defendants:

Please Take Notice That on Wednesday the fifth day of March, 1902, at 10 o'clock A. M., or as soon thereafter as counsel can be heard, we shall appear before Judge Kohlsaat and present to him a petition, a copy of which is hereto an-

nexed, for an order upon William Clancy to produce before the Master in Chancery, before whom the said cause is now pending, the information which was called for in the subpoena served upon the said Clancy on February 18, 1902 and which the said Clancy refused to produce before the said Master. Petitio with Mar

HOYNE, O'CONNOR & HOYNE,
EDWIN F. ABBOTT.
Solicitors and Counsel for Complainants.

Due service of the foregoing notice is hereby acknowledged by receipt of a copy of the same and of the petition therein mntioned this 1st day of March 1902.

ATWOOD & PEASE,
Solicitors for Defendants.

62 United States of America, Northern District of Illinois. } ss.

IN THE

CIRCUIT COURT OF THE UNITED STATES.

For the Northern District of Illinois.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the will of Robert G. Dun, deceased,—

Complainants,

vs.

The Lumbermen's Credit Association, William Clancy and Burton W. Stadden,—

Defendants.

Your Petitioners, Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the will of Robert G. Dun, deceased, respectfully represent that in the above entitled suit your petitioners, as complainants, filed a bill against the above named defendants, charging, among other things, that for many years next prior to the commencement of the said suit your petitioners and their successors had been printing and publishing a cer-

or rule on
filed
3, 1902.

tain Reference Book, and had issued an edition thereof in or about the respective months of January, March, July and September of each year; that for several years next prior to the commencement of the said suit your petitioners as executors and trustees, as aforesaid, had been conducting the business of compiling, printing and publishing the said Reference Book; that your petitioners had duly copyrighted the March 1901, July 1901 and September 1901 editions of the said book according to the statutes of the United States; that for
63 more than seven years next prior to the commencement of the said suit the defendant, the Lumbermen's Credit Association, had been printing and publishing a certain Reference Book, and had issued an edition thereof in January and July of each year; that in July 1901 the said Lumbermen's Credit Association printed and published an edition of its said Reference Book which was compiled and made up by the defendants wholly, or in great part, from the information contained in the said copyrighted March 1901 edition of the said Reference Book of your petitioners, and was wholly, or in great part, compiled and published by the said defendants without making any original investigation or inquiry for the information necessary to the composing, compiling and publishing of such a book; that at the time of the filing of the said bill, and for some time prior thereto the said Lumbermen's Credit Association was engaged in compiling an edition of its said book to be issued in January 1902, which was compiled and made up by the said defendants wholly, or in great part, from the information contained in the said copyrighted March, July and September 1901 editions of the said book of your petitioners, but more particularly the said September 1901 edition thereof, and was wholly, or in great part, compiled and was to be published by the said defendants without making any original investigation or inquiry for the information necessary to the composing, compiling and publishing of such a book.

Your Petitioners Further Represent That upon the filing of the said bill your petitioners, as complainants, moved the court for the issue of a preliminary injunction in the said cause pursuant to the prayer of the said bill, and filed affidavits in support of the said motion, and the said defendants filed affidavits against the said motion and the court refused to grant the said motion upon the said affidavits alone, but referred the said cause to Henry W. Bishop, Master in Chan-

cery of this court, to consider the said affidavits, and to take such further proof as either party might desire to offer,
64 and to determine whether a preliminary injunction should issue in the said cause as prayed for or not.

Your Petitioners Further Represent That since the filing of the said bill the said January 1902 edition of the said Reference Book of the said Lumbermen's Credit Association has been issued and that the same, or a large part thereof, was pirated from the said copyrighted March, July and September 1901 editions of the said Reference Book of your petitioners, but more particularly the said September 1901 edition thereof.

Your Petitioners Further Represent That two of the affidavits presented by the defendants to the court against the said motion for a preliminary injunction were made by the defendants William Clancy and Burton W. Stadden; that the said Clancy in his said affidavit stated that the business now carried on by the said Lumbermen's Credit Association was established twenty-six years ago; that during that time there has been gathered, collected and preserved at great expense more than one million reports concerning the financial worth, habits of pay, and business methods of persons, firms and corporations engaged in the lumber business and kindred lines in the United States and Manitoba, and that said reports and information which the said Association now has on file are of great value and worth to the said Association; that all of the information thus gathered by the said Association is collated and preserved by it in its records and files; that said Association also uses a book, commonly called the "Red Bound Book", in which appear the names and ratings as published in the last edition of the said Association's Reference Book and new names and ratings of other agencies; that the said "Red Bound Book" was used by the said Association as a reference book for comparison; that the said Association, the said Clancy or the said Stadden did not use the ratings in the March 1901 edition of the said Reference Book of your petitioners in fixing the ratings in the July 1901 edition of the Reference Book of the said Association except for comparison, and did
65 not use the ratings in the September 1901 edition of the said Reference Book of your petitioners except for the purpose of comparison, and that the ratings in the said "Red Bound Boook" were not used in compiling and finally fixing the ratings in the final issue of each edition of the said Association's Reference Book, except for the purpose

rule on
lled
1902.

of comparison; and that all raters who worked on the January and July 1901 and January 1902 editions of the said Association's Reference Book were instructed to use the said "Red Bound Book" for the purpose of comparison only in fixing ratings. But the said Clancy did not state or show in his said affidavit how the said "Red Bound Book" or the ratings of the said Reference Book of your petitioners were used for the purpose of comparison.

And your petitioners represent that the said Stadden in his said affidavit stated that he has been the secretary of the said Lumbermen's Credit Association since its organization in 1893 and is still its secretary; that the defendant's principal business is the collecting, collating and preserving data and information as to the financial worth, habits of pay and methods of doing business of persons, firms and corporations engaged in the lumber business and associated trades in the United States and parts of Canada, and furnish the same to its subscribers by means of special reports and its Reference Book, which is published in January and July of each year; that the said Association now has on file in its office at least one million reports on different persons, firms and corporations engaged in the lumber business and associated trades throughout the United States and parts of Canada; that the said Association has on file hundreds of thousands of statements in writing signed by different persons, firms and corporations engaged in the lumber business and associated trades showing their financial condition, with whom they have done business, and their bank and other references for credit; that the said statements are verified by correspondence with the persons referred to, and with the local representative of the said Association in or near the
66 town where the party furnishing the statement is located; that the names of certain persons, firms and corporations which the said Association desires to investigate especially are sent to each member or subscriber of the said Association every other week requesting them to report to said Association their business dealings and experience, if any, with the said parties, that the said Association invariably receives replies to such inquiries and that the same form part of the information and reports now on file in the office of the said Association; that blanks containing all the names in any town or locality are sent to the local correspondents of the said Association, who return the same with the information therein required, and that thousands of them are on file in

the office of the said Association, that in making revisions of Pe
the said Reference Book of the said Lumbermen's Credit Association several books and directories issued by other agencies were consulted for the purpose of comparison with the said Reference Book of the said Association as to new names; that the said Association has on file in its office reports as to all of the persons, firms and corporations contained in the said January 1902 edition of its said Reference Book, and that all of the ratings therein were made from the original sources of information and the reports on file in its office, that the "Red Bound Books" of the said Association contain the names and ratings of persons, firms and corporations engaged in the lumber and associated trades throughout the United States and Manitoba as published in the last previous edition of the said Association's Reference Book together with memoranda of ratings and new names from other reference books; that the said "Red Bound Book" and the ratings therein were sued for comparison and were used as a reference book in cases where the revision reports differed greatly from the previous rating in the said Association's Reference Book.

Your Petitioners Further Represent That among the affidavits presented by them to the court in support of the said motion for a preliminary injunction was an affidavit of one Fred W. Wright, who stated therein, among other things,
67 that he was in the employ of the said Lumbermen's Credit Association from the first week in February 1899 continuously until December 26, 1901; that while he was in the service of the said Association he was employed as a dictator of reports and as one of a number of raters in compiling the ratings which appeared in the July 1899 edition of the said Association's Reference Book and each subsequent edition thereof down to and including the January 1902 edition thereof; that it was the duty of such raters to fix the final ratings to be given in the said Reference Book of the said Association to persons, firms and corporations therein mentioned; that he had personal knowledge of the manner in which each edition of the said Association's Reference Book was compiled having worked on each edition thereof as a rater as aforesaid; that in the preparation of the January 1901, July 1901 and January 1902 editions of its said Reference Book the said Association used what it called "Red Bound Books", into which it transferred names and ratings from the said Reference Book of your petitioners; that when the said Association was making up the "Red Bound Book" which was to be

on used in preparing the January 1901 edition of its Reference
02. Book the said Association transferred to the said "Red Bound Book" names and ratings from the September 1900 edition of your petitioners' Reference Book, and for that purpose caused a copy of the said September 1900 edition of your petitioners' Reference Book to be taken apart by states and the parts thereof to be bound in manilla paper, and to be distributed among the persons to whom the work of making up the said "Red Bound Book" was assigned; that when the said Association was making up the "Red Bound Book" which was to be used in preparing the July 1901 edition of its said Reference Book it transferred to the said "Red Bound Book" names and ratings from the March 1901 edition of your petitioners' Reference Book; that in making up its "Red Bound Book" which was to be used in preparing the January 1902 edition of its said Reference Book it transferred to the said "Red Bound Book" names and ratings from the September 1901 edition of your petitioners'
68 Reference Book; that he was directed by the said Clancy to consult the ratings taken from your petitioners' Reference Book, as aforesaid, and as shown in the said "Red Bound Books" in fixing the ratings for the said January 1901, July 1901 and January 1902 editions of the said Association's Reference Book, and that under such instructions he did in every case use the ratings transferred from your petitioners' Reference Book to the said "Red Bound Books" as one of the sources of information upon which he relied in fixing such ratings as were determined by him; that in many cases no other information besides the ratings transferred from your petitioners' Reference Book to the said "Red Bound Book", as aforesaid, was furnished to him for the purpose of fixing such ratings as were determined by him, and that in such cases he copied the ratings transferred from your petitioners' Reference Book to the "Red Bound Books"; that in many other cases there was a difference between the ratings transferred from your petitioners' Reference Book to the said "Red Bound Books and the ratings indicated by other information furnished to him and that in such cases he either copied the ratings transferred from your petitioners' Reference Book to the said "Red Bound Books", as aforesaid, or split the difference between the same and the ratings indicated by such other information, and that he had seen other raters in the employ of the said Association, and the said Clancy himself use the said ratings transferred from your

petitioners' Reference Book to the said "Red Bound Books" in fixing ratings for the said January 1901, July 1901 and January 1902 editions of the said Association's Reference Book.

Your Petitioners Further Represent That the said Clancy produced before the said Master a certain book called by him a "Red Bound Book" which was used by the said defendants in fixing the ratings contained in the said January 1902 edition of the said Reference Book of the said Lumbermen's Credit Association, and the said Clancy testified before the said Master that a large number of the ratings and many of the names appearing in the said "Red Bound Book"
69 were taken from the said Reference Book of your petitioners. And the said Clancy further testified before the said Master that it was the practice of the said Lumbermen's Credit Association to send out to its correspondents printed circulars, which he called revision sheets, containing questions to be answered by such correspondents with reference to persons, firms and corporations named in such circulars, and that in many cases the said circulars when so sent out to the said correspondents contained letters and figures opposite the respective names of the persons, firms and corporations therein mentioned which the said Clancy testified indicated the amount of property which such persons, firms and corporations were supposed to be worth according to the ratings given to them in other Reference Books, of which the said the Reference Book of your petitioners was one.

And the said Clancy further testified before the said Master that neither the said Lumbermen's Credit Association nor the said Clancy, nor the said Stadden has ever been a subscriber to the said Reference Book of your petitioners but that the said Lumbermen's Credit Association had by some means, which the said Clancy refused on the witness stand to disclose, obtained possession of copies of different editions of the said Reference Book of your petitioners for the purpose of transferring information therefrom to the "Red Bound Books" of the said Lumbermen's Credit Association.

Your Petitioners Further Represent That the said Clancy testified before the said Master that one Thorbus was employed by the said Lumbermen's Credit Association to make up the "Red Bound Books" which were to be used in compiling the July 1901 and January 1902 editions of its said Reference Book, and that in making up such "Red Bound Books" the said Thorbus transferred to the same names and ratings from the said Reference Book of your petitioners; that before the

on 2. said Thorbus was employed by the said Association as aforesaid the "Red Bound Books" of the said Association were made up by some of its employes and other persons specially hired for that purpose; that names and ratings were transferred to the same from the said Reference Book of your petitioners, and that in order that the same might be better used for that purpose the said Association employed a book-binder to take said Reference Book of your petitioners apart in sections, each section embracing a state, and to bind the separate parts or sections in manilla paper and to restore the said book to its original condition after the same had been used by the said Association for the purposes aforesaid.

Your Petitioners Further Represent That on the seventeenth day of February 1902 they caused a subpoena duces tecum to be served upon the said Clancy commanding him to appear before the said Master at his office on Tuesday the eighteenth day of February 1902 at 2 o'clock in the afternoon to be examined on oath as a witness in the said cause and to produce and bring with him all written reports and correspondence and other written information in his possession or control, or in the possession or under the control of the said Lumbermen's Credit Association pertaining to the persons, firms and corporations named in a list thereof attached to the said subpoena, which subpoena and list are hereto annexed marked complainants' Exhibit 335 and made a part hereof.

Your Petitioners Further Represent That on the seventeenth day of February 1902 the said subpoena was duly served on the said Clancy by reading the same to him, and on the eighteenth day of February 1902 at 2 o'clock P. M. the said Clancy appeared before the said Master at his office pursuant to the said subpoena, and although he was then and there directed by the said Master to produce the information called for in the said subpoena, he then and there refused to produce the same, or any part thereof, as will more fully appear to the court from a transcript of the proceedings before the said Master herewith shown to the court.

Your Petitioners Further Represent That they have caused a careful comparison of the said January 1902 edition of the Reference Book of the said Lumbermen's Credit Asso-
71 ciation to be made with the said September 1901 edition of the Reference Book of your petitioners in respect to the states of Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia and Louisiana (being the states where the

persons, firms and corporations mentioned in the list attached to the said subpoena are located) with a view of ascertaining what persons, firms and corporations, located in the said states, appear in both of the said editions and how the ratings given to such persons, firms and corporations in the said January 1902 edition of the said Association's Reference Book compare with the ratings given to the same persons, firms and corporations in the said September 1901 edition of your petitioners' Reference Book, and from such examination it was found that the said January 1902 edition of the said Association's Reference Book contains altogether 942 names of persons, firms and corporations located in the said state of Alabama, of which 388 appear therein without a capital rating and 554 appear therein with a capital rating, and that of the said 554 named therein appearing with a capital rating 135, or more than 24 per cent thereof are rated therein at the same amounts as in the said September 1901 edition of your petitioners' Reference Book; that the said January 1902 edition of the said Association' Reference Book contains altogether 1119 names of persons, firms and corporations located in the said State of Arkansas, of which 486 appear therein without a capital rating and 633 appear therein with a capital rating; that of the said 633 names appearing therein with a capital rating 139, or 22 per cent thereof are rated therein at the same amounts as in the said September 1901 edition of your petitioners' Reference Book; that the said January 1902 edition of the said Association's Reference Book contains altogether 659 names of persons, firms and corporations located in the said State of Connecticut of which 138 appear therein without a capital rating and 521 appear therein with a capital rating; that of the said 521 names appearing therein with a capital rating 140, or more than 27 per cent thereof, are rated therein at the same amounts as in the said September 1901 edition of your petitioners' Reference Book; that the said January 1902
72 edition of the said Association's Reference Book contains altogether 179 names of persons, firms and corporations located in the State of Delaware, of which 42 appear therein without a capital rating and 137 appear therein with a capital rating, and that of the said 137 names appearing therein with a capital rating 45, or 33 per cent thereof are rated therein at the same amounts as in the said September 1901 edition of your petitioners' Reference Book; that the said January 1902 edition of the said Association's Reference

le on
d
902.

Book contains altogether 455 names of persons, firms and corporations located in the State of Florida, of which 208 appear therein without a capital rating and 247 appear therein with a capital rating, and that of the 247 names appearing therein with a capital rating, 40, or more than 16 per cent thereof, are rated therein at the same amounts as in the said September 1901 edition of your petitioners' Reference Book; that the said January 1902 edition of the said Association's Reference Book contains altogether 916 names of persons, firms and corporations located in the said State of Georgia, of which 303 appear therein without a capital rating and 613 appear therein with a capital rating, and that of the said 613 names appearing therein with a capital rating 137, or about 22 per cent thereof, are rated therein at the same amounts as in the said September 1901 edition of your petitioners' Reference Book; that the said January 1902 edition of the said Association's Reference Book contains altogether 583 names of persons, firms and corporations located in the said State of Louisiana, of which 230 appear therein without a capital rating and 353 appear therein with a capital rating, and that of the said 353 names appearing therein with a capital rating 94, or about 27 per cent thereof, are therein rated at the same amounts as in the said September 1901 edition of your petitioners' Reference Book.

Your petitioners' further represent that although the said January 1902 edition of the said Association's Reference Book contains 135 names of persons, firms and corporations located in the said State of Alabama to whom the same ratings are therein given as are given to the same persons, firms and corporations in the said September 1901 edi-
73 tion of your petitioners' Reference Book, as aforesaid, the said subpoena, served upon the said Clancy, as aforesaid, requires him to produce before the said Master the information therein called for with reference to 21 only of the said names; that although the said January 1902 edition of the said Reference Book of the said Association contains 139 names of persons, firms and corporations located in the said State of Arkansas to whom the same ratings are therein given as are given to the same persons, firms and corporations in the September 1901 edition of your petitioners' Reference Book, the said subpoena requires the said Clancy to produce before the said Master the information therein called for with reference to only four of the said names; that although the said January 1902 edition of the said Reference Book

of the said Association contains 140 names of persons, firms and corporations located in the said State of Connecticut to whom the same ratings are therein given as are given to the same persons, firms and corporations in the said September 1901 edition of your petitioners' Reference Book, the said subpoena requires the said Clancy to produce the information therein called for with respect to only 11 of the said names; that although the said January 1902 edition of the said Association's Reference Book containes 45 names of persons, firms and corporations located in the said State of Delaware to whom the same ratings are therein given as are given to the same persons, firms and corporations in the said September 1901 edition of your petitioners' Reference Book, the said subpoena requires the said Clancy to produce the information therein called for with respect to only two of the said names; that although the said January 1902 edition of the said Association's Reference Book contains 40 names of persons, firms and corporations located in the said State of Florida to whom the same ratings are therein given as are given to the same persons, firms and corporations in the said September 1901 edition of the said Reference Book of your petitioners, the said subpoena requires the said Clancy to produce the information therein called for with respect to only 5 of the said names; that although the said January 1902 edition of
74 the said Reference Book of the said Association contains 137 names of persons, firms and corporations located in the said State of Georgia to whom the same ratings are therein given as are given to the same persons, firms and corporations in the said September 1901 edition of the said Reference Book of your petitioners, the said subpoena requires the said Clancy to produce the information therein called for with respect to 11 only of the said names; that although the said Association's Reference Book contains 94 names of persons, firms and corporations located in the said State of Louisiana to whom the same ratings are therein given as are given to the same persons, firms and corporations in the said September 1901 edition of the said Reference Book of your petitioners, the said subpoena requires the said Clancy to produce the information therein called for with respect to 10 only of the said names

Your Petitioners Further Represent That the said information called for in the said subpoena is material to the issues in the said case and is intended to be used as evidence in the said case and for no other purpose whatever, and is required

Rule on filed 1902.

to be produced because your petitioners believe that the said information when produced will disclose evidence tending to support the issues in the said case.

Your Petitioners Further Represent That the names of the persons, firms and corporations mentioned in the said list attached to the said subpoena appeared in the said September 1901 edition of the Reference Book of your petitioners and appear in the said January 1902 edition of the Reference Book of the said Lumbermen's Credit Association, and that the ratings given to the said persons, firms and corporations in the said January 1902 edition of the Reference Book of the said Lumbermen's Credit Association are exactly the same in amount as the ratings given to the said persons, firms and corporations in the said September 1901 edition of the Reference Book of your petitioners, and that your petitioners have reason to believe and do believe that if the information called for by the said subpoena is produced it will show that the ratings given to the said persons, firms and corporations
75 in the said January 1902 edition of the Reference Book of the said Lumbermen's Credit Association are not based upon original information procured wholly by the efforts of the said Lumbermen's Credit Association, or its agents, but when taken in connection with other evidence that will be produced in the said cause by the said complainants will tend to show that the ratings given to the said persons, firms and corporations in the said January 1902 edition of the Reference Book of the said Lumbermen's Credit Association are based wholly, or in part, upon information obtained by the said defendants from the said September 1901 edition of the Reference Book of your petitioners.

Your Petitioners Further Represent That the said William Clancy is and for more than eight years has been the president and treasurer of the said Lumbermen's Credit Association, and as president thereof has the custody and control of the reports, correspondence and other information called for in the subpoena served upon him as aforesaid, and hereto attached.

Wherefore your petitioners pray that this court may enter an order directing the said William Clancy to make diligent search for the information called for in the said subpoena, and to produce the same, or so much thereof as he may be able to find, before the said Master as required by the said

subpoena, and for such other relief as to the court may seem meet and proper.

Petition witness March

MARY B. DUN,
ROBERT DUN DOUGLASS,
FRANCIS L. MINTON and
WALTER D. BUCHANAN,
Executors and Trustees under the will of Robert G. Dun, deceased.
By HOYNE, O'CONNOR & HOYNE,
EDWIN F. ABBOTT,
their Solicitors and Counsel.

HOYNE, O'CONNOR & HOYNE,
EDWIN F. ABBOTT,
Solicitors and Counsel for Complainants.

76 State of Illinois } ss.
County of Cook. }

F. E. Griswold, being duly sworn, deposes and says that he is the general manager of the above named complainants for the Chicago district and is their agent in this behalf, and that he has read the foregoing petition and knows the contents thereof and that the same is true in substance and in fact.

F. E. GRISWOLD.

Subscribed and sworn to before me this 1st day of March, A. D. 1902.

(Notarial Seal)

ARCHIBALD MCLELLAN,
Notary Public.

State of Illinois, }
County of Cook. } ss.

John O'Connor, being duly sworn, deposes and says that he is a member of the firm of Hoyne, O'Connor & Hoyne, solicitors and counsel for the complainants in the above entitled cause, that he has been and still is acting as solicitor and counsel for the said complainants in the said cause, that he has read the subpoena mentioned in the foregoing petition and attached thereto together with the list attached to the said subpoena and is acquainted with the contents thereof

r rule on filed . 1902.

and that in his opinion the information called for in the said subpoena is pertinent and material to the issues in the said case, and is not sought or intended to be used for any other purpose than as evidence in the said case.

JOHN O'CONNOR.

Subscribed and sworn to before me this first day of March, A. D. 1902.

SAMUEL GRODINSKY,
Notary Public.

(Notarial Seal)

Writ of ss.

77 COMPLTS EX. 335, H. W. B.

Master's Report.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois—

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton, and Walter D. Buchanan, executors and trustees under the will of Robert G. Dun, deceased,		
Complainant,	}	In Chancery.
vs.		
The Lumbermen's Credit Association, William Clancy and Burton W. Stadden,		
Defendants,		

In pursuance of the authority and directions contained in an order made in the above Cause by the said Court, on the 27th day of January, A. D. 1902.

I, the undersigned, as Master in Chancery of said Court do hereby Summon you William Clancy to appear before me at my office Suite 947 Monadnock Bldg. S. W. corner Jackson Boulevard and Dearborn st. in the city of Chicago on Tuesday, the 18th day of February A. D. 1902 at two o'clock in the afternoon, to be examined on oath touching certain matters and things set forth in a bill of complaint filed in this cause, and to produce and bring with you all written reports

and correspondence and other written information in your possession or control or in the possession or under the control of the Lumbermen's Credit Association pertaining to the persons, firms and corporations named in the list hereto annexed. Exhibit summ

Hereof fail not, at your peril.

Dated the 17th day of February, A. D. 1902.

H. W. BISHOP,
Master in Chancery of the Circuit Court of the United States, for the Northern District of Illinois, Northern Division.

78 State of Illinois, }
County of Cook, } ss.

Bernard P. Webber, being first duly sworn, deposes and says that he served the within writ by reading the same to William Clancy this 17th day of February, A. D. 1902.

BERNARD P. WEBBER.

Subscribed and sworn to before, me this 17th day of February A. D. 1902.

SAMUEL GRODINSKY,
(Seal) *Notary Public.*

79 Andalusia Lumber Co. Andalusia, Ala.
J. V. Stedham, Atmore, Ala.
R. E. Nobles, Bermuda, Ala.
Bridgeport Woodenware Mfg. Co. Bridgeport, Ala.
B. B. Guthrie, Carbonhill, Ala.
Mrs. M. E. Cobia, Cedarbluff, Ala.
E. S. Burns & Sons, Corbin, Ala.
Frank Hammer, Cullman, Ala.
Hungerford Lumber Co. Eldridge, Ala.
Kelly & Clark Mill Co. Eunola, Ala.
J. W. Skinner, Huntsville, Ala.
Theodore C. Crawford, Huntsville, Ala.
W. F. Moore, Marion, Ala.
Mobile Basket Co., Mobile, Ala.
Montgomery Carriage Works Co. Montgomery, Ala.
W. A. Andrews, Opelika, Ala.
B. E. Hudson, Opelika, Ala.
Curtis & Payne, Selma, Ala.
Allen Lumber Co., Sterrett, Ala.
Green Bros. Stewartsville, Ala.
J. D. Rice, Cash, Ark.

Writ of ns.

Fred Roesch, Littlerock, Ark.
Bethell G. F. & Son, Mansfield, Ark.
Geo. Pritchett, Pettigrew, Ark.
Gates Carriage Co., Bridgeport, Conn.
R. B. Stiles, Bridgeport, Conn.
Wheel & Wood Bending Co. Bridgeport, Conn.
H. G. Beaumont, East Hartford, Conn.
Isaac N. Blinn & Son, East Hartford, Conn.
Essex Wood Turning Co., Essex, Conn.
80 H. C. Wooster Co., Essex, Conn.
Knolwes Lombard Co., Guilford, Conn.
Boston Buckboard & Carriage Co., New Haven, Conn.
New Haven Carriage Co., New Haven, Conn.
Chas. S. St. John, South Norwalk, Conn..
Thos. Simpson, Camden, Del.
John S. Veasey, Coolsping, Del.
D. N. Cone, Benton, Fla.
Franklin County Lbr. Co. Carrabells, Fla.
Star Wagon Works, Ocala, Fla.
W. F. Posser, Sharon, Fla.
Wyn Bros. Wildwood, Fla.
Summer Buggy Co., Barnesville, Ga.
E. E. Foy Mfg., Co. Egypt, Ga.
C. C. Roundtree, Egypt, Ga.
J. F. Hatcher & Co. Harlem, Ga.
C. B. Ragsdale, Hollysprings, Ga.
Brumby Chair Co. Marrietta, Ga.
Gray Lumber Co. Pinebloom, Ga.
Towers & Sullivan Mfg. Co. Rome, Ga.
Ellison & Coleman, Rountree, Ga.
Moile E. Savanah, Ga.
Henderson Buggy Co. Valdosta, Ga.
Allen & OShee, Alexandria, La.
W. A. Lupton, Logansport, La.
Crescent City Mfg. Co. New Orleans, La.
Maurice Feitel, New Orleans, La.
Muller Furniture Mfg. Co. Ltd, New Orleans, La.
Schwartz Jos. Co. Ltd., New Orleans, La.
Snyder Wagon Co. Schreveport, La.
81 Brown & Hawkins, Spaulting, La.
Coltharp M. H. Tallulah, La.
Fred L. Lewis, Welsh, La.

(Endorsed) Filed in open Court, Mar. 8, 1902, S. W. Burnham, Clerk.

82 And on to-wit: the 8th day of March, 1902, there was filed in the clerk's office of said Court in said entitled cause a certain Notice in words and figures following to-wit: Notice filed 1902

NOTICE.

United States of America, }
Northern District of Illinois } ss.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the will of Robert G. Dun, deceased,

Complainants

vs.

The Lumbermen's Credit Association, William Clancy and Burton W. Stadden,

Defendants,

To Messrs. Atwood and Pease,
Solicitors for defendants.

Please take Notice that on Saturday, the 8th day of March, 1902, at ten o'clock A. M. or as soon thereafter as counsel can be heard, we shall appear before Judge Kohlsaat and present to him a petition, for an order upon William Clancy to produce before the Master in Chancery, before whom the said cause is now pending, the information which was called for in the subpoena served upon the said Clancy on February 18, 1902, and which the said Clancy refused to produce before the said Master. The petition which we will present to the court is the same petition, a copy of which was
83 served upon you the first inst., and which we were to have presented to the court on the 5th inst. pursuant to notice served upon you on the first inst. but which we

motion, rch 8, agreed at your request to present to the court on the 8th inst. instead of the 5th inst.

HOYNE, O'CONNOR & HOYNE,
EDWIN F. ABBOTT,
Solicitors and counsel for complainants.

Due service of the foregoing Notice is hereby acknowledged by the receipt of a copy of the same and of the petition therein mentioned this 7th day of March, 1902.

ATWOOD & PEASE,
Solicitors for Defendants.

(Endorsed) Filed in open Court March 8, 1902, S. W. Burnham, Clerk.

larch 8, 84 And on to-wit: the 8th day of March, 1902, being one of the days of the regular December term of said Court, 190, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

ORDER OF MARCH 8, 1902.

Granting Leave to Complainants to Examine 28 Additional Names.

Mary B. Dun, *et al.*
vs.
Lumbermen's Credit Association *et al.* } 26143

Now come the parties by their solicitors, and the motion of the complainants for a rule on William Clancy to produce certain evidence before the Master in Chancery before whom this matter has been referred, and the Court having heard the same and being now fully advised in the premises,

It is Ordered that the complainants have leave to examine the witnesses as to 28 additional names to be selected by the complainants, and said rule discharged as to William Clancy.

85 And on to-wit: the tenth day of May, 1902, there was filed in the clerk's office of said Court in said entitled cause a certain Master's Summons, which said Summons together with the notice of service thereon endorsed is in the words and figures following to-wit: Master's filed 1902

MASTER'S SUMMONS AND NOTICE OF SERVICE THEREON ENDORSED.

Master's Summons.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton, and Walter D. Buchanan, Executors and Trustees under the will of Robert G. Dun, deceased,	
Complainants	In Chancery.
vs.	
The Lumbermen's Credit Association William Clancy and Burton W. Stadden,	
Defendants,	

In pursuance of the authority and directions contained in an order made in the above Cause, by the said Court on the 27th day of January, A. D. 1902, I, the undersigned, as Master in Chancery of said Court, do hereby Summon you William Clancy to appear before me, at my office, Suite 947 The Monadnock Building, S. W. Cor. Jackson Blvd. and Dearborn St. in the City of Chicago, on Tuesday the 6th day of May A. D. 1902 at two o'clock in the afternoon, to be examined on oath, touching certain matters and things set forth in a bill of complaint filed in this cause.

86 And to produce and bring with you all the written and printed information in your possession or control, or in the possession or control of the Lumbermen's Credit Association relating to the persons firms and corporations named

mons in the list hereto annexed, and used or referred to by the said Lumbermen's Credit Association in determining or fixing the ratings of the said persons, firms and corporations in the January, 1901, July, 1901, and January, 1902 editions respectively of its Reference Book.

Hereof fail not, at your peril.

Dated the 2nd day of May, A. D. 1902.

H. W. BISHOP,
Master in Chancery of the Circuit Court of the United States, for the Northern District of Illinois, Northern Division.

State of Illinois }
County of Cook, } ss.

Bernard P. Webber, being first duly sworn, deposes and says that he served the within subpoena upon William Clancy, therein named, by reading the same to him this third day of May, 1902.

BERNARD P. WEBBER,

Subscribed and sworn to before me, this 6th day of May, A. D. 1902.

ELFIN T. RHOTEN,
(Seal) *Notary Public.*

87 E. E. Canfield, of Chico, Cal.
J. C. Cunningham of Los Angeles, Cal.
Kilifer Cultivator Co. of Los Angeles, Cal.
Hickinbotham Bros. of Stockton, Cal.
J. O. Horner & Son of Beach, Va.
Starkes Dixie Plow Works of Richmond, Va.
Lynchburg Plow Co. of Lynchburg, Va.
Shaner & Thurman of Lynchburg, Va.
The Atwood-Crawford Co. of Pawtucket, R. I.
Fred W. Morse of Providence, R. I.
Micajah Currier & Sons of Abbot, Maine.
Joseph B. Libbey of Gardiner, Maine.
John B. Varney Plow Co. of North Berwick, Maine.
Rockwell & Sherwin of Brattleboro, Vt.
Peck Clark & Co. of Brookfield, Vt.
E. R. Hill of Fairhaven, Vt.
J. E. Houston of Stowe, Vt.
Elizabeth Wagon Wks. of Elizabeth, N. J.
Neshwitz Mfg. Co. of Millington, N. J.

Thos. Riddle of Oceanport, N. J.
S. W. Hurlburd of Brasher Falls, N. Y.
Rochester Wheel Co. of Brockport, N. Y.
United Hame Co. of Buffalo, N. Y.
Chapinville Wheel Co. of Poughkeepsie, N. Y.
Metzger Bros. of Rochester, N. Y.
A. L. Varney Mfg. Co. of Syracuse, N. Y.
Jonas L. Knoll of Lebanon, Pa.
William E. Sturges & Son of Westport, Conn.
(Endorsed) Filed in open Court May 10, 1902, Marshall E. Sampsell, Clerk.

88 And on to-wit: the ninth day of May, 1902, there was filed in the clerk's office of said Court in said entitled cause a certain Notice in words and figures following to-wit:

NOTICE.

United States of America, }
Northern District of Illinois, } ss.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois.

Mary B. Dun, Robert Dun Douglas, Francis L. Minton and Walter D Buchanan, Executors and Trustees, under the Will of Robert G. Dun, deceased,
Complainants,
vs.
The Lumbermen's Credit Association, William Clancy and Burton W. Stadden
Defendants,

To Messrs. Atwood and Pease,
Solicitors for Defendants:

Please take notice that on Saturday, the 10th day of May, 1902, at ten o'clock A. M. or as soon thereafter as counsel can be heard, we shall appear before Judge Kohlsaat and ask for an order upon William Clancy to produce before the

tion. Master in Chancery before whom the above entitled cause is now pending the written information which was called for in the subpoena served upon the said Clancy on the 3rd day of May, 1902, and which the said Clancy refused to produce before the Master; and in support of the said motion we will read to the court a certified record of the proceedings in
89 the said cause before the said Master on the 8th day of May, 1902, the original bill and all affidavits heretofore filed by the complainants in the said cause, including the affidavit of F. E. Griswold, filed in the said cause on or about March 1, 1902, together with affidavits copies of which are herewith served upon you.

HOYNE, O'CONNOR & HOYNE,
Solicitors and counsel for Complainants.

Due service of the foregoing notice is hereby acknowledged by receipt of a copy of the same and of the affidavit therein mentioned this 9th day of May, 1902.

ATWOOD & PEASE,
Solicitors for Defendants.

(Endorsed) Filed May 9, 1902, Marshall E. Sampsell, Clerk.

y 10, ving per- rms- 90 And on to-wit: the tenth day of May, 1902, being one of the days of the regular December term of said Court, 1901, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

Order of May 10, 1902, denying motion to produce information called for.

Mary B. Dun, *et al.*
vs.
Lumbermen's Credit Association, *et al.* } 26143.

Now come the parties by their solicitors, and the motion for a rule on William Clancy to produce certain written information as contained in the Subpoena duces tecum, returnable before Henry W. Bishop, Esq., one of the Masters in Chancery of this court, is heard and denied, to which ruling the complainants except.

91 And on to-wit: the tenth day of June, 1902, being one of the days of the regular December term of said Court, 1901, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

Order

Order of June 10, 1902, directing Clerk not to issue Commission to take depositions.

Mary B. Dun, *et al.*
vs.
Lumbermen's Credit Association, *et al.* } 26143

Now come the parties by their solicitors, and thereupon on motion of the defendants, It is Ordered that the clerk of this court be, and he is, hereby directed not to issue any commission to take testimony herein on behalf of the complainants, until the court shall further order and direct.

92 And on to-wit: the third day of July, 1902, being one of the days of the regular December term of said Court, 1901, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

Order

Order of July 3, 1902, Withdrawing motion for Preliminary Injunction.

Mary B. Dun, *et al.*
vs.
Lumbermen's Credit Association, *et al.* } 26143

Now come the parties by their solicitors, and the complainants have leave to withdraw their motion for a preliminary injunction herein, and the complainants have forty days from August 15th next to close their prima facie proofs, the defendants to close its proofs within sixty days thereafter, and the complainants to have sixty days after the defendants have filed their proofs to take rebuttal testimony.

93 And on to-wit: the 8th day of October, being one of the days of the regular July term of said Court, 1902, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

Order of October 8, 1902, Appointing Marshall E. Sampsell, Special Examiner.

Mary B. Dun, *et al.*
vs.
Lumbermen's Credit Association, *et al.* } 26143

This cause coming on to be heard upon the motion of defendants' solicitors, Messrs. Atwood and Pease, to appoint Marshall E. Sampsell, special examiner to take testimony in the Northern District of Illinois in behalf of both parties litigant. It is now therefore so ordered and this order may be taken and stand as the authority or commission of said Sampsell so to do.

94 And on to-wit: the 17th day of January, 1902, there was filed in the clerk's office of said Court in said entitled cause the certain affidavits of Stanley T. Prudence, James B. Gilbert, Fred W. Wright, Norman H. Young, which said affidavits are respectively in the words and figures following to-wit:

95 AFFIDAVIT OF STANLEY T. PRUDENCE.

United States of America
Northern District of Illinois } ss.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the Will of Robert G. Dun, Deceased,

vs.

The Lumbermen's Credit Association, William Clancy and Burton W. Stadden,

Defendants.

State of Illinois
County of Cook } ss.

Stanley T. Prudence, being first duly sworn, on oath says that he is a resident of the City of Chicago, County and State aforesaid, and is in the employment of R. G. Dun & Co. and that he has examined the financial ratings given to certain names appearing in the March, 1901, edition of R. D. Dun & Co.'s reference book and the July, 1901, edition of the Lumbermen's Credit Association's reference book; the September, 1901, edition of the R. G. Dun & Co.'s reference book and the January, 1902, edition of said Lumbermen's Credit Association's reference book, now about to be published, and that he attaches hereto a schedule, marked "Exhibit A" and made a part hereof, showing certain names, letters and characters indicating the financial ratings of the persons, firms and corporations whose names appear in each of the said editions and the translations of the letters and characters indicating the financial ratings as shown by the letters and characters appearing in said schedule.

96 And affiant further says that column marked No. 1 of said schedule, contains the names of certain towns and the States in which they lie, appearing in each of said editions.

Column marked No. 2 of said schedule contains the names of certain persons, firms and corporations appearing in each of said editions.

Column No. 3 of said schedule contains the letters and characters attached to the respective names in Column No. 2, as the same appears in the March, 1901, edition of R. G. Dun & Co.'s reference book.

Column No. 4 of said schedule contains the letters attached to each of said names of persons, firms and corporations respectively as the same appears in the Lumbermen's Credit Association's reference book of July, 1901.

Column No. 5 of said schedule contains letters and characters attached to each of said names of persons, firms and corporations respectively as the same appear in the September, 1901 edition of R. G. Dun & Co.'s reference book.

Column No. 6 of said schedule contains the letters attached to the respective names of such persons, firms and corporations as the same appear in the January, 1902, edition of the Lumbermen's Credit Association's reference book, now about to be published by said Lumbermen's Credit Association; that under the letters and characters attached to each of said names of persons, firms and corporations appears the figures showing the translations into dollars of the respective letters and characters as shown in said schedule, such translations, however, not appearing in any of the said editions as attached to such names of persons, firms and corporations. Such translations, as the same appear in columns numbered three and five of said schedule, are translated according to the key to R. G. Dun & Co.'s ratings and such translations, as the same appear in columns four and six of said schedule, are translated according to the key to said Lumbermen's Credit Association's ratings.

97

Affiant further says that in the said Reference Books of the said R. G. Dun & Co. and the said Lumbermen's Credit Association, the States are arranged in alphabetical order, all persons, firms and corporations in each State being placed in the said Reference Books under the name of the State in which they are located, and that affiant has been unable to make an examination of the ratings in the said January, 1902, edition of the Lumbermen's Credit Association's Reference Book with respect to any State below the State af Massachusetts in alphabetical order.

STANLEY T. PRUDENCE

Subscribed and sworn to before me this 17th day of January A. D. 1902

SAMUEL GRODINSKY
Notary Public

(Notarial Seal)

EXHIBIT A

Town and State	Name	March 1901 R. G. Dun & Co.	July 1901 Lumbermens Credit Ass'n	Sept. 1901 R. G. Dun & Co.	Jany. 1902 Lumbermens Credit Ass'n
Alexander City, Ala	Tallapoosa Oil Co	D+ (50,000 to 75,000)	D (5,000 to 10,000)	D+ (50,000 to 75,000)	AA (75,000 to 100,000)
Creola, Ala	Creola Lumber Co	D (35,000 to 50,000)	D (5,000 to 10,000)	D (35,000 to 50,000)	AB (35,000 to 50,000)
Mobile, Ala	Blacksher Co	B (200,000 to 300,000)	B (25,000 to 35,000)	A (500,000 to 750,000)	AAA (over 100,000)
Mobile, Ala	Yellow Pine Lumber Co	C+ (125,000 to 200,000)	C (15,000 to 25,000)	C+ (125,000 to 200,000)	AAA (over 100,000)
Safford, Ari	Safford Lumber Co	C (75,000 to 125,000)	C (15,000 to 25,000)		
St. Johns, Ari	St. Johns Co-operative Merc & Mfg. Insts	D (35,000 to 50,000)	D (5,000 to 10,000)	D (35,000 to 50,000)	D (5,000 to 10,000)
Monticello, Ark	McCoy & Trotter	C (75,000 to 125,000)	C (15,000 to 25,000)	C (75,000 to 125,000)	AA (75,000 to 100,000)
Texarkana, Ark	Standard Novelty Works	C (75,000 to 125,000)	D (5,000 to 10,000)	C (75,000 to 125,000)	C (15,000 to 25,000)
San Bernardino, Cal	J. B. Gill Lumber Co			D (35,000 to 50,000)	D (5,000 to 10,000)
San Francisco, Cal	Bennett & Schutte	E (20,000 to 35,000)	E (3,000 to 5,000)	E (20,000 to 35,000)	E (3,000 to 5,000)
San Francisco, Cal	Bush & Mallette Co	E (20,000 to 35,000)	E (3,000 to 5,000)	E (20,000 to 35,000)	E (3,000 to 5,000)
San Francisco, Cal	Wm. Crocker	C (75,000 to 125,000)	C (15,000 to 25,000)	C (75,000 to 125,000)	C (15,000 to 25,000)
San Francisco, Cal	J. R. Hanify	E (20,000 to 35,000)	E (3,000 to 5,000)	E (20,000 to 35,000)	E (3,000 to 5,000)
San Francisco, Cal	Mac Donald Lumber Co	F (10,000 to 20,000)	F (2,000 to 3,000)	F (10,000 to 20,000)	F (2,000 to 3,000)
San Francisco, Cal	Swain Hadwen Mfg. Co	F (10,000 to 20,000)	F (2,000 to 3,000)	F (10,000 to 20,000)	F (2,000 to 3,000)
San Jose, Cal	Cottoneva Lumber Co	D+ (50,000 to 75,000)	D (5,000 to 10,000)	D (35,000 to 50,000)	D (5,000 to 10,000)
San Jose, Cal	A. Greeninger & Son	D+ (50,000 to 75,000)	D (5,000 to 10,000)	D+ (50,000 to 75,000)	D (5,000 to 10,000)
Cripple Creek, Colo	Larry Maroney	C+ (125,000 to 200,000)	C (15,000 to 25,000)	C+ (125,000 to 200,000)	C (15,000 to 25,000)
Denver, Colo	Henry Leopold	F (10,000 to 20,000)	F (2,000 to 3,000)	F (10,000 to 20,000)	F (2,000 to 3,000)
Manzanola, Colo	J. N. Beaty & Co	B (200,000 to 300,000)	BC (10,000 to 1	B (200,000 to 300,000)	B (25,000 to 35,000)
Hartford, Conn	Hartford Box Co	F (10,000 to 20,000)	F (2,000 to 3,000)	F (10,000 to 20,000)	F (2,000 to 3,000)
Milford, Conn	D. E. Smith & Co	E (20,000 to 35,000)	E (3,000 to 5,000)	E (20,000 to 35,000)	E (3,000 to 5,000)
Hawleyville, Conn	Amos Hawley	H (3,000 to 5,000)	H (100 to 500)	H (3,000 to 5,000)	H (100 to 500)
Mystic, Conn	Mystic Lumber Co	E (20,000 to 35,000)	E (3,000 to 5,000)	E (20,000 to 35,000)	E (3,000 to 5,000)

Exhibit of n

EXHIBIT "A"—Continued.

Town and State	Name	March 1901 R. G. Dun & Co.	July 1901 Lumbermens Credit Ass'n	Sept. 1901 R. G. Dun & Co.	Jany. 1902 Lumbermens Credit Ass'n
New Haven, Conn	W. S. Robinson & Co	B+ (350,000 to 500,000) C	B (25,000 to 35,000) C	B+ (300,000 to 500,000) C	(25,000 to 35,000) AA
Waterbury, Conn	Waterbury Lumber & Coal Co	(75,000 to 125,000)	(15,000 to 25,000)	(75,000 to 125,000) C	(75,000 to 100,000) C
Atlanta, Ga	Atlanta Basket & Veneer Co			(75,000 to 125,000) D	(15,000 to 25,000) D
Atlanta, Ga	E. C. Willingham & Co	D (35,000 to 50,000) G	D (5,000 to 10,000) G	D (35,000 to 50,000) G	D (5,000 to 10,000) D
Long Pond, Ga	J. H. McArthur	(5,000 to 10,000) G	(500 to 1,000) No financial rating given	(5,000 to 10,000) F	(5,000 to 10,000) F
Moreland, Ga	W. A. Brannen	(5,000 to 10,000) E		(10,000 to 20,000) E	(2,000 to 3,000) Not printed
Boise, Idaho	Ruby Creek Lumber Co	(20,000 to 35,000) C+	(3,000 to 5,000) C	(20,000 to 35,000) C+	C
Boise, Idaho	Shaw Lumber Co	(125,000 to 200,000) D	(15,000 to 25,000) D	(125,000 to 200,000) D	(15,000 to 25,000) D
Carthage, Ill	W. M. Lyons & Co	(35,000 to 50,000) C	(5,000 to 10,000) C	(35,000 to 50,000) C	(5,000 to 10,000) C
Moline, Ill	Moline Scale Co	(75,000 to 125,000) E	(15,000 to 25,000) E	(75,000 to 125,000) E	(15,000 to 25,000) E
Tremont, Ill	Mackemer & Carlin	(20,000 to 35,000) C	(3,000 to 5,000) C	(20,000 to 35,000) C	(3,000 to 5,000) C
Anderson, Ind	Wilke Mfg. Co	(75,000 to 125,000) F	(15,000 to 25,000) F	(75,000 to 125,000) F	(15,000 to 25,000) F
Bedford, Ind	W. H. Gillette	(10,000 to 20,000) D	(2,000 to 3,000) D	(10,000 to 20,000) D	(2,000 to 3,000) D
Shoals, Ind	Johnson & Chenoweth	(35,000 to 50,000) D	(5,000 to 10,000) D	(35,000 to 50,000) D	(5,000 to 10,000) B
South Bend, Ind	South Bend Wagon Co	(35,000 to 50,000) F	(5,000 to 10,000) F	(35,000 to 50,000) F	(25,000 to 35,000) F
Vincennes, Ind	E. & R. C. James	(10,000 to 20,000) C	(2,000 to 3,000) C	(10,000 to 20,000) C	(2,000 to 3,000) C
Davenport, Iowa	P. J. Stelling & Co	(75,000 to 125,000) G	(15,000 to 25,000)	(75,000 to 125,000) G	(15,000 to 25,000) G
Centerville, Iowa	A. B. M. Wilkes	(5,000 to 10,000) F	not quoted	(5,000 to 10,000) F	(500 to 1,000) F
Portland, Me	L. L. Mason	(10,000 to 20,000) F	(2,000 to 3,000) F	(10,000 to 20,000) F	(2,000 to 3,000) F
Cordova, Md	Morris & Lowe	(10,000 to 20,000) C	(2,000 to 3,000) C	(10,000 to 20,000) C	(2,000 to 3,000) No financial rating given
Boston, Mass	M. F. D'Arcy & Co	(75,000 to 125,000) F	(15,000 to 25,000) F	(75,000 to 125,000) F	F
Dartmouth, Mass	James Allen	(10,000 to 20,000) C	(2,000 to 3,000) C	(10,000 to 20,000) C	(2,000 to 3,000) C
Florence, Mass	Florence Mfg. Co	(75,000 to 125,000) C	(15,000 to 25,000) C	(75,000 to 125,000) C	AAA over 100,000
Leominster, Mass	F. A. Whitney Carriage Co	(75,000 to 125,000)	(15,000 to 25,000)	(75,000 to 125,000)	

EXHIBIT A—Continued.

Town and State	Name	March, 1901 R. G. Dun & Co.	July 1901 Lumbermens Credit Ass'n.	Sept. 1901 R. G. Dun & Co	Janv. 1902 Lumbermens Credit Ass'n.
Middleboro, Mass	Clark & Cole	D (35,000 to 50,000)	D (5,000 to 10,000)	D (35,000 to 50,000)	D (5,00 to 10,000)
So. Framington, Mass	A. H. Ordway & Co	C (75,000 to 125,000)	C (15,000 to 25,000)	C (75,000 to 125,000)	C (15,000 to 25,000)
South Hadley, Mass	Howard Gaylord & Co	C+ (125,000 to 200,000)	C (15,000 to 25,000)	C+ (125,000 to 200,000)	C (15,000 to 25,000)
Taunton, Mass	Booth & Luther	F (10,000 to 20,000)	F (2,000 to 3,000)	F (10,000 to 20,000)	F (2,000 to 3,000)
Worcester, Mass	Hatch & Barnes	E (20,000 to 35,000)	E (3,000 to 5,000)	E (20,000 to 35,000)	B (25,000 to 35,000)
Manistee, Mich	Otto Rosenfield	G (5,000 to 10,000)	G (500 to 1,000)	G (5,000 to 10,000)	G
Concord, N. H	C. H. Stevens & Co	F (10,000 to 20,000)	F (2,000 to 3,000)	F (10,000 to 20,000)	F (2,000 to 3,000)
Nashua, N. H	Procter Bros. & Co	C (75,000 to 125,000)	C (15,000 to 25,000)	C+ (125,000 to 200,000)	AB (35,000 to 50,000)
Hamburg, N. J	W. H. Ingersoll	E (20,000 to 35,000)	E (3,000 to 5,000)	E (20,000 to 35,000)	E
Mount Holly, N. J	Wm. L. Bullock	G (5,000 to 10,000)	G (500 to 1,000)	G (5,000 to 10,000)	EF (1,000 to 2,000)
Newton, N. J	Hopkins & Williams Co	D (35,000 to 50,000)	D (5,000 to 10,000)	D (35,000 to 50,000)	C (15,000 to 25,000)
Espanola, N. M	Biggs, Pollard & Groves	C (75,000 to 125,000)	C (15,000 to 25,000)	C (75,000 to 125,000)	C
Port Jervis, N. Y	J. M. Cogo & Co	F (10,000 to 20,000)	F (2,000 to 3,000)	F (10,000 to 20,000)	F
Wilmington, N. C	Fore & Foster Co	D (35,000 to 50,000)	D (5,000 to 10,000)	D (35,000 to 50,000)	D
Bradford, Pa	Stout & Holden	D+ (50,000 to 75,000)	D (5,000 to 10,000)	D+ (50,000 to 75,000)	D
Lancaster, Pa	Lancaster Planing Mill Co	C (75,000 to 125,000)	C (15,000 to 25,000)	D+ (50,000 to 75,000)	C
Littleston, Pa	Chas. Crause	F (10,000 to 20,000)	F (2,000 to 3,000)	F (10,000 to 20,000)	F
Martinsburg, Pa	Skyles, Miller & Co	D (35,000 to 50,000)	D (5,000 to 10,000)	D (35,000 to 50,000)	C (15,000 to 25,000)
Portland, Pa	Portland Lumber Co	E (20,000 to 35,000)	E (3,000 to 5,000)	C (10,000 to 20,000)	B (25,000 to 35,000)
Warren, Pa	L. S. Clough	C (75,000 to 125,000)	C (15,000 to 25,000)	C (75,000 to 125,000)	A (50,000 to 75,000)
Providence, R. I	Wm. Gilbane & Bro	C (75,000 to 125,000)	C (15,000 to 25,000)	C (75,000 to 125,000)	C
Memphis, Tenn	Blanton Stave & Lumber Co	F (10,000 to 20,000)	F (2,000 to 3,000)	F (0,000 to 20,000)	Not in
Burlington, Va	Champlain Mfg. Co	D+ (50,000 to 75,000)	D (5,000 to 10,000)	D+ (50,000 to 75,000)	D
Hundred, W. Va	J. P. Ashcraft	D (35,000 to 50,000)	D (5,000 to 10,000)		

(Endorsed): Filed, Jan. 17, 1902. S. W. BURNHAM, Clerk

f James
t, filed
1902.

103 AFFIDAVIT OF JAMES B. GILBERT.

United States of America
Northern District of Illinois } ss.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the Will of Robert G. Dun, deceased,

vs.

The Lumbermen's Credit Association, William Clancy and Burton W. Stadden,

Defendants.

State of Illinois
County of Cook } ss.

James B. Gilbert, being first duly sworn, on oath says that he is a resident of the City of Chicago, County and State aforesaid; that sometime during the year 1894 he entered the employment of the Lumbermen's Credit Association, a corporation, of Chicago, Illinois, as general office man, and as such was engaged in canvassing, by correspondence, for subscribers to the reference book issued by said corporation; and also was engaged upon the work of revising the said reference book, which was issued semi-annually, by said corporation, in January and July of each year; and that this affiant had immediate charge of the working force in the office of said corporation, so far as the same related to said reference book of said corporation; and that he has personal knowledge of the methods of said corporation in compiling the dif-
104 ferent editions of its said reference book issued from May 10th, 1894 until May 15th, 1900; that in making the revisions for the said issues of said reference book, in compiling the ratings of the persons whose names appeared in said book, the method of procedure was as follows:

The said corporation would take, in preparing each January edition of its said reference book, the last preceding

September edition of R. G. Dun & Co.'s reference book and in preparing each July edition of said corporation's book, would take the last preceding March edition of the reference book of R. G. Dun & Co.'s and have the said reference book of R. G. Dun & Co. taken apart and separated into States and would have copied into a book especially made for that purpose, known as the "red-bound book", the letters, figures and characters in said R. G. Dun & Co.'s book indicating the ratings of all the names that appeared in said corporation's book where found in the reference book of R. G. Dun & Co., and all names, business classifications, towns and ratings of all names appearing in R. G. Dun & Co.'s reference book which did not appear in said corporation's book, so far as the same related to the Lumber trade of the State which the said corporation purported to cover in its reference book. After the so-called red-bound book was prepared in the manner aforesaid, it was then distributed to different persons connected with the office of said corporation and used by such persons in compiling the ratings for several editions of the reference book, as the same were subsequently issued by said corporation. Affidavit R. G. Jan.

105 Affiant further says that in fixing the ratings, as the same appeared in each edition of the reference book issued by said corporation, while this affiant was in the employment of said corporation, such ratings taken from R. G. Dun & Co.'s reference book in the manner aforesaid, were used in compiling and finally fixing the ratings as the same appeared in the final issue of each edition of said corporation's reference book, and in a very large number of instances, no information relating to the financial standing of persons rated was obtained from original sources in fixing the ratings given in the said corporation's reference book.

Affiant further says that during all the period he was in the employment of said corporation, as aforesaid, William Clancy was the president and active manager of said corporation and that all that was done in revising the different editions of the book issued by said corporation was done under his direction, with his knowledge and approval and that he was frequently consulted during the progress of the different revisions as to the ratings to be given to different persons and that in many instances where the said corporation had information which it had obtained from original sources, which was not in harmony with the previous ratings appearing in the previous editions of the book issued by said cor-

f James
rt, filed
1902.

poration, in determining the final rating to be given, the reference books of R. G. Dun & Co. were invariably consulted and the final ratings determined by considering the the
106 ratings of the same persons or person as given by R. G. Dun & Co.

JAMES B GILBERT

Subscribed and sworn to before me this 17th day of January, A. D., 1901.

SAMUEL GRODINSKY
Notary Public.

(Notarial Seal)

(Endorsed) Filed Jan 17, 1902 S W Burnham Clerk

f Fred
ht, filed
1902.

107 AFFIDAVIT OF FRED W. WRIGHT.

United States of America,
Northern District of Illinois, } ss.
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the will of Robert G. Dun, Deceased,

vs.

The Lumbermen's Credit Association, William Clancy and Burton W. Stadden,

Defendants.

State of Illinois }
County of Cook. } ss.

Fred W. Wright, being first duly sworn, on oath says: I am a resident of the City of Chicago, County of Cook and State of Illinois. I was in the employ of The Lumbermen's Credit's Association, a corporation, from the first week in February, 1899 continuously until December 26, 1901. Dur-

ing the period of such employment the said Lumbermen's Credit Association published a Reference Book on or about the first day of January and July in each year and R. G. Dun & Co. published a Reference Book on or about the first day of January, March, July and September in each year. In the said Reference Books of the said Lumbermen's Credit Association and the said R. G. Dun & Co. certain letters and figures and characters were used to indicate the financial responsibility and commercial standing of the persons, firms and corporations therein mentioned, the letters and characters indicating the amount of property or capital such persons, firms and corporations were supposed to possess and the figures indicating the degree of credit which it was believed might be safely extended to them. In their said Reference Books the said Lumbermen's Credit Association and said R. G. Dun & Company used the same letters and figures to a great extent to indicate ratings as aforesaid but did not use the same letters and figures to indicate the same amounts but a letter or figure indicating a certain amount of capital or credit according to the system of rating used by the said Lumbermen's Credit Association indicated a different amount of capital or credit according to the system of rating used by the said R. G. Dun & Company.

Affidavit W. W. Jan. 1

108

While I was in the service of the said Lumbermen's Credit Association as aforesaid I was employed as a dictator of reports, and as one of a number of raters in compiling the ratings which appeared in the July 1899 edition of the Reference Book of the said Lumbermen's Credit Association and each subsequent edition of that book down to and including the January 1902 edition thereof now in process of preparation. It was the duty of such raters to fix the final ratings to be given in the said Reference Book of the said Lumbermen's Credit Association to persons, firms and corporations therein mentioned.

I have personal knowledge of the manner in which each of the editions herein mentioned of the said Reference Book of the said Lumbermen's Credit Association was compiled by that corporation, having worked on each edition thereof as a rater as aforesaid.

The said Reference Books of the said Lumbermen's Credit Association and R. G. Dun & Co. are each so arranged that persons, firms and corporations therein mentioned appear

Aff of Fred W. Wright, filed Jan. 1, 1902.

in the alphabetical order of their names under the names of the states and city or town where they are located, the states being arranged in the alphabetical order of their names, and the cities or towns in each state being arranged in the alphabetical order of their names under the name of the state wherein they lie.

109 Since 1900 the said Lumbermen's Credit Association, in its January edition, has revised the State of Arkansas and all states east of the Mississippi River with the exception of Wisconsin, Illinois, Michigan, Indiana, Ohio, Kentucky, and Tennessee, and in its July edition the said Lumbermen's Credit Association has revised all states not revised in the said January edition, and the Province of Manitoba.

When preparing the January, 1901 edition of its said Reference Book, the said Lumbermen's Credit Association caused a copy of the September, 1900, edition of the said R. G. Dun & Co.'s Reference Book to be taken apart and so much thereof as covered the states intended to be revised as aforesaid, to be divided into sections by states, each part consisting of a single state except in a few instances where two or more states were included in a single part because the names of the persons, firms and corporations located in such states were comparaticely few in number. After the said Reference Book of the said R. G. Dun & Co. was taken apart, as aforesaid, the parts of so much thereof as covered the states to be revised, as aforesaid, were separately bound in a temporary binding of manila paper and, together with so much of a copy of the July, 1900 edition of the said Lumbermen's Credit Association's Reference Book as covered the same states, were distributed in parts by Burton W. Stadden, the secretary of the said Lumbermen's Credit Association so that each of such employes received corresponding portions of the said Reference Books that is to say, portions thereof covering the same state or territory. I was one of the persons to whom parts of the said Reference Books were so given; and the said Stadden instructed me to take the parts so given to me to my home and to set opposite the names of such persons, firms and corporations as appeared in the part of the said Lumbermen's Credit Association's Reference Book so assigned to me the letters, figures and characters used by the said R. G. Dun & Co. to indicate the respective ratings which were given to such persons, firms and corporations in the part of the said R. G. Dun & Co.'s Reference Book so assigned to me, and

also copy in the part of the said Lumbermen's Credit Association's Reference Book so assigned to me the names of towns and names of persons, firms and corporations connected with the Lumber trade together with the ratings, if any, of such persons, firms and corporations which appeared in the part of the said R. G. Dun & Co.'s Reference Book so assigned to me but did not appear in the part of the said Lumber-
110 men's Credit Association's Reference Book so assigned to me. I followed the instructions of the said Stadden and with the assistance of my wife copied names and ratings from the part of the said R. G. Dun & Co.'s Reference Book so assigned to me into the part of the said Lumbermen's Credit Association's Reference Book so assigned to me as I was directed to do by the said Stadden as aforesaid. Similar work was done upon the other parts of the said Reference Book of the said Lumbermen's Credit Association by persons employed by the said Lumbermen's Credit Association for that purpose and such parts, after names and ratings had been copied therein from the said R. G. Dun & Co.'s Book of Reference as aforesaid, were returned to the office of the said Lumbermen's Credit Association, where I afterwards saw the same and had occasion to make frequent reference to the same in the course of my duties as an employe of the said Lumbermen's Credit Association.

When preparing the July 1901 edition of its said Reference Book the said Lumbermen's Credit Association took a copy of the January 1901 edition of its Reference Book and caused to be set opposite to the names of all persons, firms and corporations therein mentioned the respective letters, figures and characters used by the said R. G. Dun & Co. to indicate the ratings given to such persons, firms and corporations in the March 1901 edition of the said R. G. Dun & Co.'s Reference Book and also caused to be copied in the said copy of the said January 1901 edition of the said Reference Book of the said Lumbermen's Credit Association the names of such towns and the names and ratings, if any of such persons, firms and corporations connected with the lumber trade as appeared in the said March 1901 edition of the said R. G. Dun & Co.'s Reference Book but did not appear in the said January 1901 edition of the said Lumbermen's Credit Association's Reference Book.

111 As early as October 1901 the said Lumbermen's Credit Association began to prepare an edition of its said Refer-

Fred
, filed
902.

ence Book to be issued in January 1902, and in preparing the same the said Lumbermen's Credit Association took a copy of the July 1901 edition of its said Reference Book and caused to be set opposite to the names of all persons, firms and corporations therein mentioned the respective letters, figures and characters used by the said R. G. Dun & Co. to indicate the ratings given to such persons, firms and corporations in the September 1901 edition of the said R. G. Dun & Co.'s Reference Book, and also caused to be copied in the said copy of the said July 1901 edition of the said Reference Book of the said Lumbermen's Credit Association the names of such towns and the names and ratings, if any, of such persons, firms and corporations connected with the Lumber trade as appeared in the said September 1901 edition of the said R. G. Dun & Co.'s Reference Book but did not appear in the said July 1901 edition of the said Lumbermen's Credit Association's Reference Book.

The copies of the said Reference Book of the said Lumbermen's Credit Association, in which names and ratings were copied from the said R. G. Dun & Co.'s Reference Book as aforesaid, were called or denominated by the said defendant "The Red Bound Books" to distinguish the same from other books in the office of the said Lumbermen's Credit Association. Each of the said "Red Bound Books" after the same was made up as aforesaid was distributed in parts among certain employes of the said Lumbermen's Credit Association for the purpose of compiling the January 1901, July 1901 and January 1902 editions of the said Reference Book of the said Lumbermen's Credit Association; each of the said "Red Bound Books" was so used by the said employes under the direction of William Clancy, the president of the said Lumbermen's Credit Association and Burton W. Stadden, the secretary thereof. I was one of the said employes to whom parts of the said "Red Bound Book" were so assigned. Each of the said employes was furnished with a key to the ratings

112 of the said Lumbermen's Credit Association and a key to the ratings of the said R. G. Dun & Co; and in compiling the said January 1901, July 1901 and January 1902 editions of the said Reference Book of the said Lumbermen's Credit Association as aforesaid the said employes, among other things fixed the ratings to be given to the persons, firms and corporations therein mentioned, and I, as one of such employes, fixed the ratings in the parts of the said editions

which were assigned to me as aforesaid. I was directed by the said Clancy to consult the said R. G. Dun & Co.'s ratings as shown in the said respective "Red Bound Books" in fixing the ratings for the said respective editions of the said Reference Book of the said Lumbermen's Credit Association, and acting under such instructions of the said Clancy, I did in every case use the said R. G. Dun & Co.'s ratings as they appeared in the said respective "Red Bound Books" as one of the sources of information upon which I relied in fixing the ratings determined by me as aforesaid, and in many cases no other information besides the said R. G. Dun & Co.'s ratings was furnished to me for the purpose of fixing the ratings so determined by me and in such cases I copied the said R. G. Dun & Co.'s ratings as they appeared in the said "Red Bound Books"; and in many other cases there was a difference between the said R. G. Dun & Co.'s ratings as they appeared in the said "Red Bound Books" and the ratings indicated by other information furnished to me and in such cases I either copied the said R. G. Dun & Co.'s ratings or split the difference between the same and the ratings indicated by such other information. I have seen other raters in the employ of the said Lumbermen's Credit Association, and Mr. William Clancy himself use the said R. G. Dun & Co.'s ratings as shown in the said "Red Bound Books" in fixing ratings for the said January 1901, July 1901 and January 1902 editions of the said Lumbermen's Credit Association's Reference Book.

FRED W WRIGHT

Subscribed and sworn to before me this 17 day of January, A. D. 1902.

SAMUEL GRODINSKY
Notary Public.

(Notarial Seal)

(Endorsed) Filed Jan 17, 1902 S W Burnham Clerk.

113 AFFIDAVIT OF NORMAN H. YOUNG.

United States of America
Northern District of Illinois, } ss.
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the will of Robert G. Dun, deceased,

vs.

The Lumbermen's Credit Association, William Clancy and Burton W. Stadden,

Defendants.

State of Illinois } ss.
County of Cook.

Norman H. Young, being duly sworn, on oath deposes and says: I was in the employ of the firm of Evans & Kelly from the latter part of July or the early part of August to the seventeenth or eighteenth day of October, 1901. The said firm is what is called an addressing firm and is engaged in doing copying work, making trade lists and addressing and mailing letters, circulars, etc. for others. A trade list is a list of the names of persons, firms and corporations to whom letters or circulars are sent. The names of the persons, firms and corporations comprising such trade lists, or to whom Evans & Kelly send letters or circulars are procured by them from directories, mercantile reference books and other sources of information. I know that they used R. G. Dun & Co.'s Reference Book for that purpose while I was in their employ. They took it apart for convenience so that they could distribute
114 it in parts among their employes in order that a number of their employes might be using different parts of it

at the same time. While I was in their employ they copied the letters, figures and characters indicating the ratings and other information from R. G. Dun & Co.'s September 1901 Reference Book into a copy of some other reference book which I have reason to believe to have been a reference book of the Lumbermen's Credit Association. The said Reference Books, or a large portion of them, were distributed by the said Evans & Kelly in parts among certain of their employes so that each of the said employes received corresponding parts of the said Reference Books, that is, portions thereof covering the same states or territory. I received the parts of the said Reference Books covering New Jersey and other states which I do not now remember. Acting under the instructions of the said Evans & Kelly I set opposite the names of the persons, firms and corporations appearing in the parts of the said Lumbermen's Credit Association's Reference Book, so assigned to me, the ratings given to such persons, firms and corporations in the parts of the said R. G. Dun & Co.'s Reference Book so assigned to me, and I also copied in the parts of the said Lumbermen's Credit Association's Reference Book, so assigned to me, the names of all persons, firms and corporations connected with the lumber trade which appeared in the parts of the said R. G. Dun & Co.'s Reference Book, so assigned to me, but did not appear in the parts of the said Lumbermen's Credit Association's Reference Book, so assigned to me; and wherever the business of any person, firm or corporation as shown in the parts of the said Lumbermen's Credit Association's Reference Book so assigned to me was different from the business of the same person, firm or corporation as shown in the parts of the said R. G. Dun & Co.'s Reference Book, so assigned to me, I noted such difference in the parts of the said Lumbermen's Credit Association's Reference Book so assigned to me and wherever the name of a person, firm or corporation appeared in the parts of the said R. G. Dun & Co.'s Reference Book, so assigned to me, and did not appear in the parts of the said Lumber-
115 men's Credit Association's Reference Book, so assigned to me, I copied the name of such person, firm or corporation in the parts of the said Lumbermen's Credit Association's Reference Book, so assigned to me, and whenever the name of a person, firm or corporation appeared in the parts of the said Lumbermen's Credit Association's Reference Book, so assigned to me, but did not appear in the parts of the said

R. G. Dun & Co.'s Reference Book, so assigned to me, I noted, the omission of the name of such person, firm or corporation from the parts of the said R. G. Dun & Co.'s Reference Book, so assigned to me, by making an X mark in the parts of the said Lumbermen's Credit Association's Reference Book, so assigned to me, as I had been instructed to do by the said Evans & Kelly.

While I was doing the work aforesaid it was the general talk among the employes engaged in the said work that the said work was being done for the Lumbermen's Credit Association. I asked an employe, who had been engaged in doing similar work on a former edition of the Lumbermen's Credit Association's Reference Book if the work which we were doing was not being done for the said Lumbermen's Credit Association and he said that it was.

While I was engaged in the work aforesaid, and on or about the twentieth day of September, 1901, I wrote a letter to the Lumbermen's Credit Association in which I applied for employment with them. In that letter I stated in substance that the thought of applying to the said Lumbermen's Credit Association for a position had occurred to me from the fact that I was then at work on its book at Evans & Kelly's. In reply to that letter I received on or about the twenty-first day of September, 1901 a letter from William Clancy as the president of the said Lumbermen's Credit Association stating that they would be pleased to have me call and see them as they would like to confer with me in regard to the subject matter of my letter. A day or two after receiving the said letter I called at the office of the said Lumbermen's Credit Association and introduced myself to Mr. William Clancy. I told him that I had called in answer to the letter I had received from him. I told him that I had had considerable experience in mer-
116 cantile agency work as I had been in the employ of R. G. Dun & Co. off and on for about eight years and that I was then working for Evans & Kelly and was doing work on his book; I told him that I presumed it was confidential matter and I assured him that I would say nothing about it. He did not deny that the book on which Evans & Kelly were working as aforesaid was the Reference Book of the Lumbermen's Credit Association, but he seemed to treat the matter as an ordinary business matter of no special consequence. A day or two afterwards Mr. Kelly, of the said firm of Evans & Kelly, asked me if I had applied to the Lumbermen's Credit

Affida
mar
filed
190

Association for a position. I told him I had. He said that he did not want me to mention the name of his firm to Mr. Clancy as it might tend to jeopardize future business relation with him. I answered that I had not told Mr. Clancy that I had learned from his firm that the work which they were doing was being done for the Lumbermen's Credit Association. To this Mr. Kelly made no reply.

I have been shown a copy of the July 1901 edition of the Reference Book of the said Lumbermen's Credit Association and I am satisfied from an inspection of the same that it is a copy or duplicate of the Reference Book on which the said Evans & Kelly did the work aforesaid.

NORMAN H YOUNG

Subscribed and sowrn to before me this 17th day of January, A. D 1902.

J C HENDRICKS JR.
(Notarial Seal) *Notary Public.*

(Endorsed) Filed Jan 17, 1902 S W Burnham, Clerk

117 And on to-wit: the 25th day of January, 1902, there was filed in the clerk's office of said Court in said entitled cause the certain affidavits of Burton W. Stadden William Clancy, Philip C. Howard, and A. L. Knefler, which said affidavits are respectively in the words and figures following, to-wit:

urton
n,
25.

118 AFFIDAVIT OF BURTON W. STADDEN.

United States of America,
Northern District of Illinois, } ss:
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,
For the Northern District of Illinois,
Northern Division.

Mary B. Dun, Robert Dun Douglas, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the Will of Robert G. Dun, deceased,

vs.

Lumbermen's Credit Association, William Clancy and Burton W. Stadden.

State of Illinois, }
County of Cook, } ss:

Burton W. Stadden, being first duly sworn, on his oath deposes and says, that he is one of the defendants in the above entitled cause, and secretary of the defendant Lumbermen's Credit Association, and has been since its organization in 1893.

Affiant says further that he entered the employment of William Clancy in 1887, then doing business as the Lumber Mercantile Association, and continued in his employment until the incorporation of said association.

119 Affiant says further, that he is assistant manager of said association, and has charge of the collection department of said association and general supervision of the business in the absence of William Clancy, and that he is perfectly familiar with the business of said association, and has been since its organization; that said Lumbermen's Credit Association is a special mercantile agency for lumber and associated trades throughout the United States and parts of Canada.

Affiant says further, that said Lumbermen's Credit Association has, and for a number of years last past has had, its attorneys, agents, correspondents or representatives in all

Affidav
W. S
filed
1902.

of the principal cities and towns throughout the United States and parts of Canada, and also travelers collecting information; that the principal business of said association is collecting, collating and preserving data and information as to the financial worth, habit of pay and methods of doing business, of persons, firms and corporations engaged in the lumber business and associated trades in the United States and parts of Canada, and furnishing the same to its subscribers by means of special reports and its reference book, which is published in January and July of each year; that all such information so obtained by said association is confidential, and is conveyed to its members or subscribers through said reference books and reports by means of a key or symbols consisting of certain letters and figures which were adopted when the said business was established in 1876, and since that time have been in constant use in said business; that said association now has on file in its office at least one million reports on different persons, firms and corporations engaged in the lumber business and associated trades throughout the United States and parts of Canada.

120 Affiant says further, that one of the sources of information on which ratings are made by said association, is by means of the information coming to it through the collection department and through reports furnished it by its members from time to tiem as to their dealings and experience with their customers in the lumber business; that, in addition thereto, said association has on file hundreds of thousands of statements in writing signed by different persons, firms and corporations engaged in the lumber business and associated trades, showing their financial condition, with whom they have done business, and their bank and other references for credit, which statements are investigated by correspondence with the persons referred to, and also with the local representative of said association in or near the town where the party furnishing the statement is located; that as an additional means and source of information, the names of certain persons, firms and corporations which said association desires to investigate especially, are sent to each member or subscriber of said association every other week, requesting them to report to said association their business dealings and experience, if any, with said parties, to which said association invariably receives replies, which replies form part of the information and reports now on file in its office; that preceding the issuance of each reference book, in January and July of each year, one-half of

Burton
en,
25.

the book is thoroughly revised, so that there is a complete annual revision of said book, in the following manner: all the names in any town or locality are placed upon a blank and sent to the local correspondent of said association in said town or locality, these blanks calling for varied information in regard to the parties who are engaged in business. These blanks are returned by the correspondent, with the information therein required, and the thousands of them on file form another source of information.

121

Affiant says further, that in making these revisions, several books and directories issued by other agencies were consulted for the purpose of comparison with the book of said association as to new names, and in all cases where new names were discovered, inquiries were at once sent out by said association for information as to their financial worth and general standing, and the replies received thereto formed another source of information as a basis for defendants book.

Affiant says further, that said association has 31 blank forms, which it uses in getting information for the compilation of its reference book, which forms are herewith submitted for the inspection of the Court.

Affiant says further, that he, with the said William Clancy, has general supervision of the work of compiling the information and ratings of its said reference book, and that he is thoroughly conversant with the method used by said association in compiling the same; that all persons assisting in the compilation of said reference books, including the January, 1902, edition thereof, were instructed under no circumstances to use the ratings of any other agency, or to transfer any name or other information from any reference book to the reference book of said association.

Affiant says further, that said association has on file in its office reports as to all of the persons, firms and corporations contained in the January, 1902, edition of its reference book, and that all of the ratings therein were made from original sources of information, and the reports on file in its office, and that in no instance, so far as affiant is informed or has any knowledge, was there any name or rating transferred or copied from any reference book of complainants or other person.

121½

Affiant says further, that each of the raters who did work on the January and July, 1901, and the January, 1902, edition of said reference book of said association, and all other editions thereof, were instructed not to copy or transfer any

rating from the so-called red bound books, nor to include in their compilations any name or names contained in said red bound books until they had received reports or other original information as to the financial standing and business methods of said parties. Affidavit of W. Stadden filed Jan. 1902.

Affiant says further, that said red bound books contain the names and ratings of persons, firms and corporations engaged in the lumber and associated trades throughout the United States and Manitoba, as published in the last previous edition of said reference book of the defendant association, together with memoranda of ratings and new names from other reference books.

Affiant says further, that said red bound books were used as a guide in sending out inquiries for information and for comparison, and for no other purpose; that in no case were any of the ratings contained in said red bound books copied or transferred into the reference book of defendants, and that no new name was included in the compilation of said reference book until reports or other original information was in the possession of said association; and that said red bound book was only used as a reference book in cases where the revision reports differed greatly from the previous rating in defendants' reference book, which did not occur in more
122 than one per cent. of the names appearing in such revision of said reference book.

Affiant says further, that it is not true, as stated in Fred W. Wright's affidavit, that there are figures in the "key" used by defendants indicating the degree of credit which it was believed might be safely extended to persons, firms and corporations, and that it is not true that said Wright, in the course of his duties as an employee of said Lumbermen's Credit Association, had occasion to make frequent reference to said red bound books; and that it is not true, as stated in said affidavit of Fred W. Wright, that said red bound books were distributed in parts among certain employees of said Lumbermen's Credit Association for the purpose of compiling the July, 1901, or the January, 1902, editions of said reference book of said Lumbermen's Credit Association.

Affiant says further, that it is not true, as stated in said Fred W. Wright's affidavit, that there was no other information besides R. G. Dun & Company's ratings furnished to him for the purpose of fixing the ratings determined by him in the work which he did upon the revision of said reference book.

of Burton
dden,
n. 25.

Affiant says further, that he has read the affidavit of James B. Gilbert on file in this case, and that it is not true, as stated in said affidavit, that Gilbert had immediate charge of the working force in the office of said association so far as the same related to the reference book of said corporation, and that said Gilbert left the employ of said association in May, 1900, and had nothing to do with the January and July, 1901, and the January, 1902, edition of said reference book, and that he has no knowledge as to the manner in which the same were compiled.

123 Affiant says further, that it is not true, as stated in said Gilbert's affidavit, that in a very large number of cases no information relating to the financial standing of persons rated in said defendants' reference book was obtained from original sources, or that the ratings in said red bound book were used in compiling and finally fixing the ratings as the same appeared in the final issue of each edition of said association's reference book, or that the said ratings in said red bound book were used except for the purpose of comparison as stated herein.

Affiant says further, that said James B. Gilbert is in the employ of the Foster Lumber Mercantile Agency, a rival concern engaged in the same line of business as the defendant association; that said Gilbert was formerly in the employ of said association, and while in its employ furnished said Foster Agency with a list of its subscribers and dates of expirations, which had cost the defendant company a large amount of money to secure, and which list and dates of expirations were of great value to the Foster Agency.

Affiant says further, that as soon as the defendant association learned of this fact and confronted said Gilbert with it, that he as first denied it, but that when he went home that night he never returned to the office of the defendant association, although he had a contract of employment with them for three years at a much higher salary than he has since received, and that affiant learned, within a week thereafter, that said Gilbert was working for the Foster Agency.

Affiant says further, that the reference book issued by the defendant association is compiled and published especially for the lumber and kindred trades throughout the United

124 States and Manitoba; that it contains upwards of sixty thousand names, and that a very large majority of such names have appeared in the various reference books issued by said association for many years, and that not more than

five to ten per cent. of the names or ratings contained in said reference book are changed in each revision thereof; that for each revision of said books, from thirty to forty thousand inquiries are sent out to correspondents, representatives, subscribers and travelers for information, on blanks prepared for that purpose, to each city and town revised, and the information and reports received in reply thereto are used in connection with the reports and information previously received and on file in the office of said association, in fixing the ratings contained in the revision of said reference book.

Affidavit of W. Stadden filed June 1902.

Affiant says further, that the classification and scope of defendants' reference book is entirely different from the reference book issued by complainants; that it contains many names and ratings of lumber dealers and manufacturers not contained in complainants' reference book; that defendants' book contains a list of railroads reaching each town, name of a bank, express company, list of attorneys and a correct classification of business showing the kind of lumber manufactured and handled, and in the manufacturing lines showing the different articles manufactured; also designating those concerns not carrying regular stocks of lumber, and giving a complete list of country yards owned and operated by the same parties and giving the location of their purchasing department; also ruled spaces at the left hand side of the printed matter in which to note freight rates, and on the right hand side of the printed matter, a blank margin for inserting the names of new dealers and manufacturers; also noting changes in ratings, firms and other information effecting the trade; also a thumb index for locating the States, none of which features are contained in the reference book published by complainants.

Affiant says further, that the reference book issued by the defendant association is endorsed by the various lumber associations throughout the country, and is the recognized authority as to its lists, ratings and information contained therein among the lumber trade.

Affiant says further, that the key used by the complainants is well known among business men generally; that the key used by the defendant association in its reference book is entirely different from the key used by complainants; that in no instance does the same letter which is sometimes used indicate the same amount, and that there is a very wide difference in the amount represented by the letters used in complainants' and defendants' key: that defendant has no letter indicating

of Burton
dden,
n. 25,

an amount above one hundred thousand dollars, while complainants' key indicates amounts up to one million dollars; that the key to the reference book of said Lumbermen's Credit Association indicates the habit of pay, viz: "prompt pay", "medium pay", "slow pay", and "very slow pay"; that defendants' key also indicates all manner of delinquencies, insolvencies, transfers and encumbrances, numbering one hundred thirteen specific items of information indicating the business standing or condition of persons, firms and corporations appearing in its reference book.

Affiant says further, that he has read the Bill of Complaint in the above entitled cause, and that it is not true, as stated therein, that the defendant association, William Clancy,
126 and this affiant compiled the reference books issued by the Lumber Mercantile Agency and said Lumbermen's Credit Association, or any of them, in whole or in part, from any reference book or part thereof issued by Complainants or their predecessors, or information and ratings obtained therefrom; and that they did not copy any names or ratings from any reference book issued by the complainants or obtained therefrom in compiling any of the reference books issued by said agency or said association.

Affiant says further, that he has assisted and had general supervision of the compiling and rating of each of the revisions of said reference book issued by said defendant association since its incorporation, and also of the Lumber Mercantile Association, and including the January and July, 1901, and the January, 1902, editions of said reference book, and that in said last mentioned reference books no names or ratings were copied from any reference book issued by complainants, and that each and all of the said ratings contained in said last mentioned reference books, and all names appearing therein, were based upon and taken from original sources of information in the office of said association; and that said association, William Clancy and this affiant have not, to his knowledge, pirated, copied or transferred into defendants' reference books, or any of them, any of the names, ratings or information contained in any reference book published by the complainants or their predecessors.

BURTON W STADDEN

Subscribed and sworn to before me, this 24th day of January, A. D. 1902.

JOHN N GROESS
(Seal) *Notary Public.*

(Endorsed) Filed Jan 25, 1902 S W Burnham, Clerk

127 AFFIDAVIT OF WILLIAM CLANCY

Affidavit of William filed 1902.

United States of America,
Northern District of Illinois, } ss:
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Northern Division.

Mary B. Dun, Robert Dun Douglas, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the will of Robert G. Dun, deceased,

vs.

Lumbermen's Credit Association, William Clancy and Burton W. Stadden.

State of Illinois,
County of Cook, } ss:

William Clancy, being first duly sworn, on his oath deposes and says that he is one of the defendants in the above entitled cause, and the president and treasurer of the Lumbermen's Credit Association, a corporation of Illinois, with its principal office in the city of Chicago, in the said County; that said association is a special mercantile agency devoted to the lumber and kindred trades; that the business now carried on by said association was established twenty-six years ago; that
128 said association collects, collates and preserves information concerning the financial worth, habits of pay and methods of doing business of manufacturers and dealers in lumber and kindred trades throughout the United States and Manitoba; that said association has its correspondents or representatives, numbering many thousands, in all of the principal cities and towns in the United States and Manitoba, from whom information and reports are received; that it also receives statesments from manufacturers, dealers and users of lumber and kindred lines, and that it also has several travelers soliciting business and gathering information; that

lancy, 25. during the twenty-six years aforesaid, there has been gathered, collated and preserved, at great expense, more than one million reports concerning the financial worth, habits of pay and business methods of persons, firms and corporations engaged in the lumber business and kindred lines in the United States and Manitoba, and that said reports and information which it now has on file are of great value and worth to said association; that said association has from twenty-five to thirty-five employees, and occupies over fifteen hundred square feet of office room; that it receives on an average from 300 to 500 letters daily; that all of the information so gathered and preserved by said association is confidential, and is gathered and preserved for the purpose of furnishing confidential reports to its subscribers.

Affiant says further, that another means of furnishnig said information to its subscribers is a reference book, which is published by said association semi-annually, in January and July of each year that said information is compiled in said reference book by means of a certain "key" or cymbols
129 adopted and used in the said business since 1876, a copy of which "key" is submitted herewith as Exhibit A for the inspection of the Court.

Affiant says further, that another source of original information is by means of reports from its subscribers as to their dealing and experience with the different lumber users throughout the United States and Manitoba; and that still another source of information is through its collection department, which handles a very large number of claims, through which it comes directly in contact with a large number of lumber users and dealers, and gathers much valuable information as to their habits of pay and methods of doing business; that still another source of information is through the trade journals, periodicals, law bulletins, daily papers and five or six clipping bureaus; that all of the information thus gathered by said association is collated and preserved by it in its records and files.

Affiant says further, that it has a general revision book, in which corrections, new names and ratings are noted from day to day; that it also uses a book, commonly called the red bound book, in which appear the names and ratings as published in the last edition of defendants' reference book, and new names and ratings of other agencies; that said red bound book is used only as a guide for sending out inquiries for

information on new names, and as a reference book for comparison. Affida Wi file 190

Affiant says further, that the reference book published by said association contains upwards of sixty thousand names of persons, firms and corporations engaged in the lumber and associated trades throughout the United States and Manitoba, and that a large majority of such names have appeared in the reference book issued by the defendant association for eight or ten years, and that not more than ten per cent. 130 of the names or ratings are changed in each revision of said reference book; that said book is revised and published semi-annually in January and July of each year; that for each revision of said book from thirty to forty thousand inquiries are sent to our correspondents, representatives, subscribers for information, on blanks especially prepared for that purpose, to each and every town revised, and the information received in reply thereto is used in connection with the reports and information previously received and on file, in fixing the ratings contained in said reference book.

Affiant says further, that the reference book issued by said association is confined to the lumber and associated trades in the United States and Province of Manitoba, while the reference book issued by complainants embraces all kinds and classes of business, and covers the United States, Canada, British Provinces and North America.

Affiant says further, that the general scope and classification of its reference book is entirely different from the reference book issued by complainants; that its reference book is devoted entirely to the lumber and associated trades, and is compiled and arranged especially to meet the needs and requirements of the persons, firms and corporations manufacturing and dealing in lumber and kindred lines; that said defendants' reference book contains many names and ratings of lumber dealers and manufacturers not contained in complainants' reference book; that defendants' book gives the name of a bank and an attorney under each town, which complainants' do not do in their reference book; that defendants' book also contains a shipping guide, express directory, 131 atorneys' directory, freight rate columns, marginal State index and a blank margin for corrections and notations, which complainants' reference book does not contain.

Affiant says further, that the arrangement and classification of lumber dealers in defendants' reference book is entirely different from complainants' reference book; that the

classifications of business in defendants' reference book show who the manufacturers, wholesale and retail dealers are, and whether they manufacture and deal in other than pine lumber, and in cases where the person, firm or corporation has a number of country yards, defendants' reference book gives the location of the purchasing department, and hardware dealers that keep sash and doors in stock, none of which information is contained in the reference book issued by complainants.

Affiant says further, that by reason of the very long use of complainants' "key", it is well known among business men generally.

Affiant says further, that in some instances the same letters are used in defendants' "key" that complainants use in their key, but that in no instance does the same letter indicate the same amount which said person, firm or corporation are reputed to be worth, and that there is a very wide difference in the amounts represented by the same letters used in complainants' and defendants' "key"; that defendant has no letter indicating an amount above one hundred thousand dollars, while complainants' "key" indicates amounts up to one million dollars; that the meaning of defendants' "key" and the information intended to be conveyed thereby is entirely different from complainants' "key", and that in no instance does the same letter or figure indicate or convey the same amount or information; that the "key" to the reference book of said Lumbermen's Credit Association indi-
132 cates the habit of pay as follows: viz: "prompt pay", "medium pay", "slow pay", and "very slow pay", while complainants' key indicates a limit of credit which it is supposed may be safely extended to persons, firms or corporations; that defendants' "key" indicates also all manner of delinquencies, insolvencies, encumbrances, transfers, judgments, bills of sale, chattel mortgages, complaints and so on, numbering in all one hundred thirteen specific items of information, indicating the business standing or condition or persons, firms or corporations appearing in said reference book, while complainants' key refers to only 4 items of general credit.

Affiant says further, that he has read the Bill of Complaint herein, and that it is not true, as stated in said Bill, that he compiled and made up the reference book published by him under the name and style of the Lumbermen's Credit Association, in January and July of each year, prior to the in-

corporation of said association, wholly or in great part from the information contained in the reference books previously issued by the predecessors of the complainants without making any original investigation or inquiries for the information necessary to the composing, compiling and publishing of such book or books, and says that such reference book, and each of them, so published by affiant, were made up from original sources of information, gathered, collated and preserved, as aforesaid. Affids. Wif file, 1903

Affiant says further, that it is not true, as stated in said Bill, that the Lumbermen's Credit Association, Burton W. Stadden or this affiant, or any of them, after the incorporation of said association, compiled and made up its reference books, or any of them, wholly or in great part from the information contained in the reference books previously published by
133 the complainants and their predecessors, or without making any original investigations or inquiries necessary to the composing, compiling and publishing of such book or books.

Affiant says further, that it is not true, as stated in said Bill, that the edition of said reference book printed and published by said Lumbermen's Credit Association in July, 1901, was compiled and made up by that association, Burton W. Stadden and this affiant, or any of them, wholly or in great part from information contained in the March, 1901, edition of complainants' reference book, or that said July, 1901, edition of said reference book was wholly or in part compiled and published by said association, without making any original investigation or inquiry for the information necessary to the composing, compiling and publishing thereof.

Affiant says further, that it is not true, as stated in said Bill, that the January, 1902, edition of said reference book was compiled and made up by said association, Burton W. Stadden or this affiant, or any of them, wholly or in great part from the information contained in said March, July and September, 1901, editions of complainants' said reference book, or any of them, or that said January, 1903, edition of said association's reference book was wholly or in great part, or in any part whatever, compiled without making any original investigation or inquiry for the information necessary to the composing, compiling and publishing thereof.

Affiant says further, that it is not true, as stated in said Bill, that said reference book, issued by said association, contains certain figures used to indicate the extent it is believed

ncy, certain persons, firms or corporations may be safely cred-
134 ited; that the figures contained in said reference book issued by said association do not indicate any limit of credit which it is supposed may be safely extended to them.

Affiant says further, that it is not true, as stated in said Bill, that said association, Burton W. Stadden and this affiant, or any of them, in compiling the July, 1901, reference book of said association, copied in some instances names of towns, and in other instances names and ratings of persons, firms and corporations, from complainants' March, 1901, book, or that said association, Burton W. Stadden or this affiant, in other instances, used the ratings in complainants' March, 1901, book in fixing the ratings in the July, 1901, book of said association, except for comparison, as hereinbefore stated, or that said association, Burton W. Stadden and this affiant, or any of them, inserted the ratings, with slight and colorable changes, in the July, 1901, book of said association, from the complainants' March, 1901, book, or that said association, Burton W. Stadden and this affiant, or any of them, in other instances intended to and did copy the ratings appearing in said complainants' March, 1901, book, but, by mistake, copied some letters and figures therein used by complainants according to their system of rating, and thereby unintentionally gave different ratings than those given by complainants.

Affiant says further, that said Lumbermen's Credit Association, Burton W. Stadden and this affiant did not, in the compiling of said July, 1901, book of said association, copy, insert or transfers names of towns, or names and ratings of persons, firms and corporations, from complainants' March, 1901, book, or any other book of complainants.

135 Affiant says further, that it is not true, as stated in said bill, that said association, Burton W. Stadden or this affiant, or any of them, in compiling the January, 1902, edition of said association's reference book, copied in some instances names of towns, and in other instances genuine and fictitious names and ratings of persons, firms and corporations from complainants' 1901 book, or in other instances used the ratings in complainants' September, 1901, book, except for the purpose of comparison, as hereinbefore stated, or inserted the same in the January, 1902, edition of the book of the Lumbermen's Credit Association, with slight and colorable changes, or that said defendants, or any of them, intended to or did copy the ratings appearing in complainants' 1901 book, or by mistake copied the same letters and figures

therein used by complainants according to their system of rating, and thereby unintentionally gave different ratings than those given by complainants.

Affiant says further, that in compiling the January, 1902, edition of said association's reference book, neither of said defendants copied, transferred or inserted therein the name of any town, or the names and ratings of any persons, firms or corporations, or any information, from complainants' September, 1901, book, or any other book or books issued by complainants.

Affiant says further that he does not know either member of the firm of Evans & Kelly, and that the Lumbermen's Credit Association, Burton W. Stadden and this affiant never had any business dealings whatever with Evans & Kelly.

Affiant says further, that he has read the affidavits on file in this case, made by James B. Gilbert and Fred W. Wright; that said James B. Gilbert and Fred W. Wright are in the employ of the Foster Lumber Mercantile Agency, a rival
136 concern of said defendant association, engaged in the same business.

Affiant says further, that it is not true, as stated by said James B. Gilbert in his affidavit, that he had immediate charge of the working force of said corporation so far as the same related to the reference book, or any other department of the work.

Affiant says further, that the red bound book referred to in the affidavits of James B. Gilbert and Fred W. Wright contained other names and ratings than those of complainants, and that it is not true, as stated in the affidavit of said James B. Gilbert, that in a very large number of instances no information relating to the financial standing of persons rated was obtained from original sources, or that the ratings in said red bound book were used in compiling and finally fixing the ratings as the same appeared in the final issue of each edition of said association's reference book, except for the purpose of comparison, as hereinbefore stated.

Affiant says further, that said James B. Gilbert was not in the employ of said association, and did not work upon the reference book issued by said association in July, 1901, or January, 1902.

Affiant says further, that it is not true, as stated in said affidavit of Fred W. Wright, that the reference books of said association contain any figures indicating the degree of credit

which it is believed might be safely extended to the persons, firms and corporations therein named.

Affiant says further, that it is not true, as stated in said Fred W. Wright's affidavit, that in many cases no other information besides R. G. Dun & Company's ratings were furnished to him for the purpose of fixing the ratings so determined by him.

137 Affiant says further, that if said Wright copied any of the ratings from the red bound book, he did so without the knowledge or consent of this affiant, and in direct violation of his instructions and duties in the premises.

Affiant says further, that he instructed all raters working on the January and July, 1901, and the January, 1902, editions of the reference book of said association, not to copy any names or ratings from said red bound book, and that they were all instructed to use said red bound book for the purpose of comparison only in fixing ratings.

Affiant says further, that said James B. Gilbert was formerly in the employ of the defendant association, and while in its employ colleagued with the Foster Mercantile Agency, its officers or employees, to furnish them with valuable and important information, to the great detriment and injury of the defendant association, and that said Gilbert, while in the employ of said association, did furnish said Foster Agency with a list of its subscribers and dates of expirations; that as soon as this fact came to the knowledge of affiant, he, in the presence of Burton W. Stadden, charged said Gilbert with having furnished said list of subscribers and dates of expirations to the Foster Agency, which said Gilbert then denied; that later in the day, affiant and said Burton W. Stadden went to the office of E. E. Moberly, a large stock-holder in the Foster Agency, and had a talk with said Moberly and W. A. Glass, treasurer of said Foster Agency, regarding the matter, and that said Moberly and Glass admitted to affiant and Burton W. Stadden that said James B. Gilbert had furnished them with a list of the subscribers of the defendant association, together with the dates of the expirations of such sub-

138 scriptions, and that the same was in Gilbert's own handwriting.

Affiant says further, that said Gilbert left the office of said defendant that evening (on or about the 15th of May, 1900) after finishing his day's work, and never returned; that said Gilbert said nothing whatever to affiant about intending to

leave, and that said association then had a contract of employment with said Gilbert for a period of three years, at a salary of $40 per week, which was more than he has since received; that said Gilbert is now working for the Foster Agency at a salary of $25 per week, as affiant is informed and believes.

Affiant says further, that said Gilbert telephoned the office of said association the next morning, stating that he was sick and that he would not be down that day, and that affiant learned within a few days thereafter that said Gilbert was in the employ of said Foster Lumber Mercantile Agency.

Affiant says further, on information and belief, that Edwin F. Abbott, one of the solicitors for the complainants herein, is the personal attorney of E. E. Moberly, the financial backer and a large stock-holder in the Foster Lumber Mercantile Agency, and was one of the incorporators of said agency.

Affiant says further, that he has read the affidavit of Norman H. Young on file in this case; that said Young applied to affiant for a position sometime in September, 1901, and that in the course of said conversation, Young referred to the firm of Evans & Kelly, and affiant then told Young that he did not know Evans & Kelly, and had no business transactions with them.

Affiant says further that the only way which complainants could have gotten possession of the proof sheets of de-
139 fendants' January, 1902, edition of said reference book, was by bribing some person in the employ of the printer who did the printing on said book, or some person in the employ of the bindery, or some person in the employ of the defendant association.

Affiant says further, that if a preliminary injunction is issued in this case, that it will cause the defendant association and this affiant irreparable injury and great loss and damage; that the said association now has the confidence of the lumber trade throughout the country, and that its reference book is regarded as the authority on lumber credits; that he has given very close personal attention to the business of said association for twenty-six years, and that it represents the life work of affiant; that, while the said business was begun in a small way, it has grown to be a business of great proportions, and is of great financial worth and value, and the profits and income therefrom are very remunerative; that the records and reports now in the possession of said association are worth from $300,000 to $500,000, and that if an injunction is-

sues, as prayed for in the Bill in this case, that said reports will be practically valueless; that the reputation and standing which said association and affiant now have with the lumber trade will be impaired, and their confidence lost, and the business of said association ruined.

Affiant says further, that he verily believes that this proceeding was instigated, and the information upon which the bill is based was furnished to the complainants by the Foster Lumber Mercantile Agency, its officers or employees, and that there is and has been for weeks, if not months, past, a
140 conspiracy between certain officers, employees or agents of said Foster Agency, and said complainants, or some of them, or certain persons representing them, whose names are unknown to affiant, to crush the defendant association and drive it out of business.

Affiant says further that he and said association are financially responsible and abundantly able to pay any decree which may be entered in this case against them or either of them, if any such decree is ever entered.

(Signed) WILLIAM CLANCY

Subscribed and sworn to before me, this 24th day of January, 1902.

JOHN N. GROESS
(Seal) *Notary Public.*

(Endorsed) Filed Jan 25, 1902 S. W Burnham, Clerk

141 AFFIDAVIT OF PHILIP C HOWARD

Affidavit of Philip C. Howard, Jan. [illegible]

United States of America,
Northern District of Illinois, } ss.
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Northern Division.

Mary B. Dun, Robert Dun Douglas, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the will of Robert G. Dun, deceased,

vs.

Lumbermen's Credit Association, William Clancy and Burton W. Stadden.

State of Illinois,
County of Cook. } ss.

Philip C. Howard, being first duly sworn, on his oath deposes and says that he is in the employ of the Lumbermen's Credit Association and that he assisted in the compilation of the January 1902 edition of its reference book, and that in the revision of said reference book, inquiries were sent out on revision blanks for reports upon all persons, firms and corporations appearing in the "red bound books" assigned to him.

Affiant says further that said "red bound books" contained names and ratings given in the last previous edition of the reference book published by said Association, together with additional names and ratings from reference books of other agencies. That said "red bound books" are bound in separate
142 states and that such "red bound books" were used only as a guide in sending out blanks for reports and for comparison in case where reports received differed widely from the ratings in the defendant's previous reference book; that the percentage of such names to which reference was had in said "red Bound Books" was very small and did not exceed

Philip
d, filed
1902.

more than two or three per cent and that the changes in the revision of said reference book in the states compiled by affiant did not exceed ten or fifteen per cent.

Affiant says further that he did not copy or transfer any name or rating from said "red Bound Books" into the printer's original copy of the January 1902 edition of said reference books which affiant prepared and that he did not include any new name in the said compilation without first obtaining a report or some other original information from said Association's correspondents or representatives on such party.

Affiant says further that in compiling and fixing the ratings in the portion of the January 1902 edition of said reference book assigned to him, he relied upon the revision reports, files and records in the office of said Association; that when he first began the said revision work, William Clancy positively instructed him, not to copy or transfer any rating from said "red Bound Books" under any circumstances and not to include any new name without first securing some original information or report thereon.

Affiant says further that he is acquainted with Fred W. Wright whose affidavit is on file in this case and that said Wright left the employment of the Lumbermen's Credit Association on or about the twenty-sixth day of December, 1901, and went to work for the Foster Lumber Mercantile Agency; that said Wright stated to affiant on that date that William Clancy had refused to give him a recommendation. He said to me "What do you think, that son of a bitch refused to give me a recommendation."

143 Affiant says further that he had another conversation with said Wright on or about the fourth day of January, 1902, and that said Wright stated to affiant that there was a big surprise in store for Clancy, the affect of which would be more than he could imagine and that while he wouldn't say that Clancy would not get out another book, his business would be seriously affected, if not forced to quit.

Affiant says further that he had another conversation with said Wright on the evening of January eighteenth last and that said Wright gave affiant a copy of the Evening Post of that date and called his attention to an account therein of this suit and stated to affiant that, of course, we (the Foster Agency) have nothing to do with this case but later stated to affiant that he would be a principal witness in the case and that Clancy would be sorry for the way in which he had used

him, and that Clancy might have avoided all this had he treated him differently.

Affiant says further that said Wright was at the time of all of these conversations and is now in the employ of the Foster Lumber Mercantile Agency.

PHILIP C HOWARD

Subscribed and sworn to before me this 23rd day of January, 1902.

LOUIS B DOOR
Notary Public.

(Seal)

(Endorsed) Filed Jan 25. 1902 S W Burnham Clerk

144 AFFIDAVIT OF A. L. KNEFLER

United States of America,
Northern District of Illinois, } ss.
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Northern Division.

Mary B. Dun, Robert Dun Douglas, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the will of Robert G. Dun, deceased,

vs.

Lumbermen's Credit Association, William Clancy and Burton W. Stadden.

State of Illinois,
County of Cook. } ss.

A. L. Knefler, being first duly sworn, on his oath deposes and says that he is in the employ of the defendant, Lumbermen's Credit Association: that he assisted in the compilation of the January 1902, edition of the reference book issued by said Association; that in the revision of said reference book,

f A. L. filed 1902.

inquiries were sent out on revision blanks for reports upon all persons, firms and corporations appearing in the "red bound book" assigned to him.

Affiant says further that said "red bound book" contains the names and ratings in the last edition of the reference book published by said Association and additional names and ratings from reference books of other agencies; that said "red bound book" was used only as a guide in sending out blanks for reports and for comparison in cases where the reports
145 received differed widely from the ratings in defendant's previous reference book; that the percentage of names, in which reference was had to said "red bound book" was very small, not exceeding one in every hundred names.

Affiant says further that he did not copy or transfer any name or rating from said "red bound book" into the printer's original copy of the January 1902, edition of said reference book and that he did not include any new name in the compilation of said January, 1902, edition of said reference book, without first obtaining a report or original information from said Association's correspondents on such party.

Affiant says further that in compiling the portion and fixing the ratings for the January 1902, edition of said reference book assigned to him, he relied upon the revision reports, files and records in the office of said Association; that William Clancy instructed him not to copy or transfer any name or rating from said "red bound book."

Affiant says further that he is acquainted with Fred W. Wright, whose affidavit is on file in this case; that he met said Wright between two and three weeks ago and that said Wright then stated to affiant in substance that there was some thing in the wind that would occur in a short time to the detriment of the Lumbermen's Credit Association.

A L KNEFLER

Subscribed and sworn to before me this 24th day of January, A. D. 1902.

LOUIS B DORR
(Seal) *Notary Public.*

(Endorsed) Filed Jan 25, 1902 S. W. Burnham Clerk

146 And on to-wit the tenth day of May, 1902, there was filed in the clerk's office of said Court in said entitled cause the certain affidavits of William A. Douglass and John O'Connor, said affidavits are respectively in the words and figures following to-wit: Affidavit of William A. filed 1902

AFFIDAVIT OF WILLIAM A. DOUGLASS.

United States of America,
Northern District of Illinois } ss.

IN THE CIRCUIT COURT OF THE UNITED STATES

For the Northern District of Illinois

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the Will of Robert G. Dun, Deceased,

Complainants,

vs.

The Lumberman's Credit Association William Clancy and Burton W. Stadden

Defendants.

State of Illinois
County of Cook, } ss.

William A. Douglass, being duly sworn, deposes and says that he is the agent in this behalf of the complainants in the above entitled cause; that the persons, firms and corporations named in the list attached to the subpoena served on William Clancy on the third day of May, 1902, are rated in the January, 1902 edition of the Reference Book of the Lumbermen's Credit Association at the same amounts according to its system of rating as they are rated in the September, 1901, edition of the Reference Book of R. G. Dun & Co. according to their system of rating, and that the written information called for in the said subpoena is material to the issues in the said

of Will- Douglass, y 10,

case and is intended to be used as evidence in the said case and for no other purpose whatever, and is required to
147 be produced because the said written information when produced will disclose evidence tending to support the issues in the said case; that if the written information called for in the said subpoena is produced, it will tend to show that the ratings given to the said persons, firms and corporations in the said January, 1902, edition of the Reference Book of the said Lumbermen's Credit Association are not based upon original information procured wholly by the efforts of the said Lumbermen's Credit Association or its agents, but, when taken in connection with other evidence that will be produced in the said cause by the said complainants, will tend to show that the ratings given to the said persons, firms and corporations in the said January, 1902, edition of the Reference Book of the said Lumbermen's Credit Association are based wholly or in part upon information obtained by the said defendant from the said September, 1901, edition of the Reference book of your petitioners.

Affiant further states that the said William Clancy is and for more than eight years last past has been, the president and treasurer of the said Lumbermen's Credit Association, and as such president has the custody and control of the written information called for in the subpoena served upon him, as aforesaid.

WILLIAM A. DOUGLASS.

Subscribed and sworn to before me this 9th day of May, 1902.

SAMUEL GRODINSKY,
Notary Public.

(Seal)

(Endorsed) Filed in open Court May 10, 1902, Marshall E. Sampsell, Clerk.

148 AFFIDAVIT OF JOHN O'CONNOR.

United States of America,
Northern District of Illinois. } ss.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, executors and trustees under the will of Robert G. Dun, deceased

Complainants

vs.

The Lumbermen's Credit Association, William Clancy and Burton W. Stadden

Defendants

State of Illinois
County of Cook, } ss.

John O'Connor, being duly sworn, deposes and says that he is a member of the firm of Hoyne, O'Connor & Hoyne, solicitors and counsel for complainants in the above entitled cause; that he has been and still is acting as solicitor and counsel for the said complainants in the said cause; that he has read the subpoena served upon William Clancy therein on the third day of May, 1902, together with the list of names attached to the said subpoena and is acquainted with the contents thereof and that in his opinion the written information called for in the said subpoena is pertinent and material to the issues in the said case and is not sought or intended to be used for any other purpose than as evidence in the said case.

JOHN O'CONNOR.

149 Subscribed and sworn to before me, this 9th day of May, 1902.

SAMUEL GRODINSKY,
(Seal) *Notary Public.*

(Endorsed) Filed in open Court May 10, 1902, Marshall E. Sampsell, Clerk.

COMPLAINANTS' DEPOSITIONS.

150 In the Circuit Court of the United States,

For the Northern District of Illinois—

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton, and Walter D. Buchanan, Executors and trustees under the will of Robert G. Dun, deceased,	In Equity. Notice for taking of depositions.
vs.	
Lumbermen's Credit Association, William C. Clancy and Burton W. Stadden	

To Messrs. Atwood & Pease, Defendants' Solicitors.

Gentlemen:

Please take notice that on the 20th day of October 1902, at ten o'clock A. M. before Henry A. Bradshaw, Notary Public, or in case of his absence or inability to act, before some other competent officer duly authorized under the statutes so to act, at the office of Cooper & Foster, attorneys at law in the city of Huntsville in the County of Madison and state of Alabama, we shall take the depositions of the following witnesses who reside more than one hundred miles from the place of trial in the above entitled cause, to-wit: W. L. Halsey, and others. The examination of the said witnesses will continue from day to day until completed. The said depositions will be read in evidence on the part of the complainants on the trial of the said cause. You are invited to attend and cross examine if you so desire.

Hoyne, O'Connor & Hoyne.
Offield, Towle & Linthicum,
Solicitors for Complainants.

Chicago, October 13th, 1902.

Recd. a copy of the within notice is hereby acknowledged by the receipt of a copy thereof this 13th day of October, A. D. 1902.

Atwood & Pease,
Solicitors for Defendants.

151 IN THE CIRCUIT COURT OF THE UNITED STATES

For the Northern District of Illinois—

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the Will of Robert G. Dun, Deceased	In Equity.
vs.	
Lumbermen's Credit Association, Willing Clancy and Burton W. Stadden.	

At Huntsville, in the County of Madison, State of Alabama, on this, 20th day of October, 1902, at ten o'clock A. M. of said day, before me, Henry A. Bradshaw, a Notary Public within and for said County of Madison, State of Alabama, at the office of Cooper and Foster, in the said City of Huntsville, personally appeared Lawrence Cooper, Solicitor for Complainants and Charles O. Loucks, Solicitor for Defendants and, thereupon the following proceedings were had, pursuant to notice and the attendance of counsel.

Complainants called as a witness in their behalf, WILLIAM L. HALSEY, who being first duly sworn by me, testifies as follows:

Dep... W... Hal...

Q. Please state your name, place of residence and how long you have so resided there? A. I have been here all my life, at Huntsville, Alabama.

Q. In what business are you engaged and how long have you been so engaged? A. Wholesale grocery business—about twenty-three years.

Q. Do you mean to say that you have been engaged in business in the City of Huntsville continuously during that period of time to the present time? A. I have.

Q. State whether or not you have an acquaintance throughout the City of Huntsville, with persons engaged in the general line of trade. A. Yes sir.

152 Q. What are your facilities or opportunities for knowing such people? A. My business bring me in contact with most of the trade of Madison County.

Q. Do you know Theo. C. Crawford? A. No sir, I do not.

Q. State whether or not you have ever heard of a man by the name of Theo. C. Crawford. A. I never heard of any one living here by that name.

Q. State whether or not any person by the name of Theo. C. Crawford was engaged in the sash, door and blind business in the City of Huntsville during the year 1901 or prior thereto.

Defendants by their counsel object to the question, because it calls for a conclusion of the witness and because it is not shown that the witness has any personal knowledge of the matter.

A. Not to my knowledge.

Q. If any person by that name was so engaged in the sash, door and blind business in the City of Huntsville during that period or during the present year of 1902, would you not have known it?

Defendants by their Counsel object to the question, because it calls for a conclusion of the witness and because it is not shown that the witness has any personal knowledge of the matter.

A. Well, I presume I would.

Defendants by their Counsel move to strike the question out, being a mere conclusion and presumption.

Q. State whether or not if any such person was so engaged in the business indicated, during this period in the City of Huntsville, that your opportunities were of such a nature tha this business could not have escaped your attention.

Defendants by their Counsel object to the question, because it is involved, is leading and calls for a conclusion of the witness and it is not shown by the witness that he has any personal knowledge of the matter.

A. This is rather a hard question to answer. I know most every one in the City and at all times since I have been in the mercantile business, there have been very few people engaged in most any kind of business in this City that I have not known.

Q. State, whether or not any person by the name of Theo. C. Crawford was engaged in any line of business in January, 1902 or prior thereto.

153 Defendants by their Counsel object to the question,

because it calls for a conclusion of the witness and because it is not shown that the witness has any personal knowledge of the matter.

A. Not that I know of.

Q. Have you any personal knowledge of persons engaged in business in Huntsville in the sash, door and blind business or in any other line of business in 1902 and prior thereto? A. Yes.

Q. Name such as you know. A. C. E. Hutchens is engaged in this business.

Q. Do you know any one else? A. William Myers is a contractor and deals in these articles. Then J. N. D. Brown. Eugene Latta to the best of my knowledge and belief was in the same kind of business. I know he furnished all kinds of outside decorations—fancy work for porches and trimming for houses, but I do not know whether he handled blinds and sash or not.

Cross-Examination.

Q. Mr. Halsey, on direct examination, you said that your business brings you into contact with a great many people. Is this business your store on Jefferson Street that says wholesale groceries on one side and wholesale wines and liquors on the other? A. Yes sir.

Q. You also have feed, have you not? A. Yes sir.

Q. And you are also agent for the Anhauser-Busch Brewing Company, are you not? A. I handle their goods and buy them.

Q. How large a place is Huntsville? A. Huntsville proper—in the corporate limits, I should say was about twelve to fourteen thousand.

Q. What do you mean by Huntsville proper? A. I don't include East and West Huntsville.

Q. Are there not several small tributary towns or suburbs that are considered a part of Huntsville in a general way? A. There are East and West Huntsville. While they are a part of Huntsville, could not be called Huntsville proper.

154 How large a place is East Huntsville? A. I do not know—I suppose they have fifteen hundred or two thousand inhabitants.

Q. You are not sure? A. No sir.

Q. Are you acquainted in East Huntsville? A. I know some people there.

Q. Do you know the majority of the people in East Huntsville? A. I do not.

Q. How large a place is West Huntsville? A. I should say about the same as East Huntsville.

Q. Are you acquainted with the majority of the people in West Huntsville? A. No—they are principally mill operatives.

Q. Are there any other towns or small places tributary to Huntsville that you can recall? A. There is an addition here called North Huntsville.

Q. How large a place is North Huntsville? A. That is a small place. I don't know how large it is.

Q. Can you estimate the size of it? A. I know less about that they any part of the City. I do not know how many people are there.

Q. Huntsville has grown considerably has it not in the last five or six years? A. I should say from five to eight thousand people.

Q. Are there not a large number of people in the country district about here who get their mail at Huntsville? A. Yes.

Q. Are you acquainted with all of these people? A. I do not know all of the people in the country.

Q. Do you know any men in town here by the name of Crawford? A. I knew of some Crawfords that did live here. I don't know whether they live here now or not.

Q. Do you know their first names? A. One was named Aus.

Q. Was that a nick-name? A. I do not know.

155 Q. You don't know his right name—whether it was Theo. or not? A. No.

Q. Do you know anybody else in town by the name of Crawford? A. No, I don't believe I do.

Q. Is it not possible that there is or was a man in town by the name of Theo. C. Crawford and you not know anything about it? A. It might be possible.

Q. The sash and door line is not a line distinct by itself is it? I men by that, that it is not a line in which men engage as a single operation, devoting their time to that business alone? A. I should think not.

Q. Are there not a great many people living in Hunts-

ville engaged in business while you do not know what business they are engaged in? A. I think not.

Q. Your answers refers to what is called Huntsville proper does it not. A. No, my answer would cover those suburbs.

Q. You say you think not? A. Yes sir.

Q. It is not possible that there can be a man engaged in a line of business and you not know it? A. It might be possible.

Q. Mr. Halsey, when did you first hear of this case? A. Mr. Cooper or Mr. Foster asked me about it I suppose may be two or three weeks ago. I don't knew just how long ago. They asked me if I knew such a party and told me that they might want to take my deposition. I have made it a point to try to find out such a man, but have not.

Q. Is some one from the office of Cooper and Foster the only ones who have talked to you who who would represent the Complainants? A. Yes they are the only ones.

Q. Have you received any correspondence from any one. A. I don't think I have.

Q. You are positive that you have not? A. I could not say positively without looking to see. I don't know whether I got a letter in regard to it or not. I am of the opinion that I did not.

156 *Re-butting Examination.*

Q. In what business were the Crawfords of whom you speak engaged? A. They were farmers.

Q. How far did they live from Huntsville? A. About three and one-half miles.

Q. Do you know the persons who are engaged in business in the suburbs of Huntsville? A. I think I know most of them, if not at all.

Q. You state that you are engaged in the wholesale business. Do you sell goods on credit? A. Yes.

Q. Are you accustomed to consult Mercantile Agency reports? A. Yes sir.

Q. Is it probable that a man by the name of Crawford would be engaged in business in Huntsville for any length of time without your knowledge?

Defendants by their counsel object to the question, because it calls for a conclusion of the witness and be-

cause it has not been shown that he has any personal knowledge of the matter.

A. I hardly think it probable.

Q. State whether or not your acquaintance and business interests are so extensive that it would not be probable for any man to be engaged in any business in the City of Huntsville for any length of time--a year or more, without your knowledge.

Defendants by their counsel object to the question for the reason that it calls for a conclusion of the witness and it is not shown that the witness has personal knowledge of the matter.

A. My business is of such a nature that I am brought into contact with most any kind of business that is conducted in the City or in the suburbs of Huntsville and I hardly think it probable that a business could be conducted of any importance a year or more in Huntsville, and I know nothing about it.

Defendants by their counsel move to strike out the answer, as being a mere conclusion of the witness.

Re-cross Examination.

Q. Mr. Halsey, you have a large number of com-
157 petitors have you not in your line of business? A. Yes, we have competitors.

Q. About how many? A. In the wholesale business we have three or four competitors.

Q. What do you mean by retail business. A. I have a retail as well as wholesale business.

Q. Have you not competitors in the retail business? How many? A. I don't know. Most all of the stores in town might be called competitors.

Q. You say you consult Mercantile Agency reports? Have you consulted R. G. Dun's reports to ascertain whether the name of Theo. C. Crawford is in it or not. A. No sir.

W. L. HALSEY

Commissioners fee for taking deposition	$5.00
Witness fees one days attendance	1.50
Total	6.50

Above costs paid by complainant.

HENRY A. BRADSHAW
Commissioner.

158 United States of America
Northern Division of the Northern } ss.
District of Alabama.

Certi
no

I, Henry A. Bradshaw, a Notary Public within and for Madison County, in the State of Alabama, do hereby certify that the reason for taking the foregoing deposition is, and the fact is that the testimony of the said witness is material and necessary for the Complainants in the cause in the caption of the said deposition mentioned, and that said witness lives and at the time of the taking of the said deposition did live at Huntsville, in the County of Madison, and State of Alabama, more than One Hundred miles (100) from the City of Chicago, in the County of Cook and State of Illinois, where the Court at which said cause is to be tried was appointed by law to be held.

I further certify that notification of the time and place of the taking of the said deposition made and signed by the solicitors for the Complainants was duly served on the solicitors for the defendants, to be present at the taking of the said deposition and to put interrogatories to the said witness if they might think fit.

I further certify that on the 20th day of October, 1902, I was attended at the place named in the said notification for the taking of the said deposition, by Cooper and Foster, solicitors for the Complainants and Charles O. Loucks, solicitor for the Defendants, and also by the witness, W. L. Halsey, who was of sound mind and lawful age; and the said witness was by me carefully examined, cautioned and sworn to testify to the truth, the whole truth and nothing but the truth; that the said deposition was taken down in short-hand by Miss Jessie M. Harris, a stenographer, under a verbal agreement of counsel, and by her reduced to typewriting under my personal supervision; that after carefully reading the same to the said witness, he subscribed the same in my presence; that I retained the said deposition in my possession for the purpose of sealing and directing the same with this certificate of the reasons aforesaid for taking the said deposition, with my own hand to the Court for which the same was taken.

And I do further certify that I am not of counsel or attorney for either of the parties in the said deposition and

caption named, or in any way interested in the event of the said cause in the said caption named.

159 In Witness Whereof I have hereto set my hand and affixed my Notarial Seal this, 20th day of October, in the year of our Lord, One Thousand Nine Hundred and Two.

HENRY A BRADSHAW (Seal)
Notary Public.

(Endorsed) Received and Filed Oct 22, 1902 Opened at Request of Compts Solrs Marshall E Sampselll Clerk

160 DEPOSITION OF JAMES STRATHAM GOREE.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois--

Northern Division.

Mary R. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and trustees under the will of Robert G. Dun, deceased	In Equity.
vs.	Notice for taking of depositions.
Lumbermen's Credit Association, William C. Clancy and Burton W. Stadden	

To Messrs. Atwood & Pease, Defendants' Solicitors.
Gentlemen:

Please take notice that on the 21st day of October, 1902 at one o'clock P. M. before W. J. Mauk, Notary Public, or in case of his absence or inability to act, before some other competent officer duly authorized under the statutes so to act, at the office of said W. J. Mauk No. 12 Commerce street in the city of Montgomery in the County of Montgomery and State of Alabama we shall take the depositions of the following witnesses who reside more than one hundred miles from the place of trial in the above entitled cause to-wit: L. E. Goree, William A. Jackson and others. The examination of the said witnesses will continue from day to day until completed.

The said depositions will be read in evidence on the part of the complainants on the trial of the said cause. You are invited to attend and cross examine if you so desire. Notice.

HOYNE, O'CONNOR & HOYNE,
OFFIELD, TOWLE & LINTHICUM,
Solicitors for Complainants.

Chicago, October 13th, 1902.

Recd. a copy of the within notice is hereby acknowledged by the receipt of a copy thereof this 13th day of October, A. D. 1902.

ATWOOD & PEASE,
Solicitors for Defendants.

161 IN THE

CIRCUIT COURT OF THE UNITED STATES.

For the Northern District of Illinois,

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the Will of Robert G. Dun, deceased,
vs.
Lumbermen's Credit Association, William Clancy and Burton W. Stadden.
} In Equity.

At Montgomery, in the County of Montgomery and State of Alabama, at one o'clock P. M., of said day, before me, W. J. Mauk, a Notary Public within and for Montgomery County, in the State of Alabama, at my office, No. 12 Commerce Street, in said City of Montgomery and State of Alabama, personally appeared R. E. Steiner, Solicitor for Complainants, and Charles O. Loucks, Solicitor for Defendants, and thereupon the following proceedings were had, pursuant to notice and the attendance of counsel:

Plaintiffs called as a witness in their behalf JAMES STATHAM GOREE, who being first duly sworn by me, testified as follows: Deposition of James S. Goree.

The Solicitor for the defendants objected to the taking of the deposition of the witness because his name is not

Goree. mentioned in the notice in this case which has been served upon the solicitors for the defendants.

On direct examination by R. E. Steiner:

Q. What is your full name? A. James Statham Goree.
Q. Where do you live? Wetumpka.
Q. In what county and state? Elmore County, Alabama.
Q. How long have you lived in Elmore County, Alabama? A. All my life.
Q. How old are you? A. I am twenty-five.
Q. Do you know L. F. Goree? A. I do.
162 Q. What relation is he to you? A. He is my grandfather.
Q. Where is he now? A. He is right now north of Spigener, sick.
Q. What is the proper way to spell "Spigener"? A. The proper way is Speigener, but we leave out one "e" and spell it "Spigener".
Q. How far does your grandfather live from Spigener? A. He lives about two and a half miles.
Q. How long has he lived at that place? A. All his life —all my life, as far as I can recollect.
Q. What is his present condition physically—is he sick or well? A. He is sick.
Q. Is he confined to his bed? A. He is.
Q. How long has he been confined to his bed? A. Nearly four weeks.
Q. How old is your grandfather? A. He is eighty-four yeasr old.
Q. Was he ever engaged in the saw mill business? A. He was.
Q. To whom did he sell his saw mill business. A. To my father.
Q. When did he sell his saw mill business to your father? A. As near as I can recollect it was about twenty years ago.
Q. What was your father's initials? A. J. L.—James Lang Goree was his name.
Q. When did your father quit the saw mill business?

The Solicitor for defendants objects to the question because it is not shown by the witness that his father has ever quit the saw mill business.

Solicitor for Complainants then withdrew the question.

Q. Is your father living or dead? A. He is dead.
Q. When did he die? A. He died about eight years ago.
Q. Did any one succeed him in the saw mill business? A. They did.
Q. Who was it? A. My mother administered on his estate, and she and myself run it.
Q. Did you and your mother run the business any length of time? A. We run it over twenty-seven months.
Q. What are your mother's initials? A. Mrs. M. J. Goree.

Q. How long since you and your mother, either or
163 both, ceased to have anything to do with the saw mill business?

Defendant's Solicitor objects to the question because it is double, and it is not shown that the witness has ceased to have anything to do with the saw mill business.

Solicitor for Complainants then withdrew the question.

Q. You said that the business was done by you and your mother for about twenty-seven months? A. Yes sir.
Q. Was it run any longer than twenty-seven months? A. No sir, not by us.
Q. What did you do with it? A. We sold it.
Q. To whom? A. W. S. Thornhill.
Q. When was that? A. That was five years ago.
Q. During the last five years has anyone by the name of Goree conducted a saw mill business there?

Solicitor for Defendants objects to the question because it is leading, and calls for a conclusion of the witness, and it is not shown that the witness has any personal knowledge of the matter in question.

A. No sir.
Q. How far is Wetumpka from where this saw mill was? A. It was nine miles.
Q. Are you familiar with the people and persons who conduct a saw mill business in that neighborhood? A. Yes sir.
Q. Then state again, please, whether or not any one by the name of Goree conducts a saw mill or saw mill business anywheres near Spigener, or in that neighborhood?

Solicitor for Defendants objects to the question because it calls for the conclusion of the witness, and it is not shown that he has personal knowledge of the matter inquired about.

of Goree.

A. No sir.

Q. Do you know whether L. F. Goree, your grandfather, has had anything to do with, or been connected with the saw mill business for the last eight or ten years? A. I do.

Q. Has he or not been conducting a saw mill, or been connected with the saw mill business for the last eight or ten years?

Solicitor for Defendants objects to the question, because it calls for the conclusion of the witness, it not being shown that he has personal knowledge of the matter in question.

A. He has not.

Q. Do you know, of your own knowledge, whether any one by the name of Goree was engaged in the saw mill 164 business at or near Spigener, in January, 1902, or for two years prior thereto? A. Yes sir, I know.

Q. Has anybody by the name of Goree been engaged in the saw mill business at or near Spigener in January, 1902, or for two or three years prior thereto?

The Solicitor for Defendants objects to the question, because it calls for the conclusion of the witness, and it has not been shown that the witness has personal knowledge of the matter in question.

A. There has not.

Cross Examination by Charles O. Loucks:

Q. Your grandfather was formerly engaged in the saw mill business, was he not? A. Yes sir.

Q. At Spigener Station? A. No sir, not right at the station.

Q. Somewheres near the station? A. Yes sir.

Q. For how many years was your grandfather engaged in the saw mill business at that place? A. He was engaged in it before I was born; I do not know how many years.

Q. Do you know about how many years? A. I do not know about how many.

Q. Was it a very long period of time? A. Yes sir; my father bought his saw mill before I was born.

Q. Do you know anything about the details of the transaction between your grandfather and your father at the time you say your father bought the saw mill? A. No sir.

Q. You do not know what your father paid for the mill? A. No sir.

Q. You do not know whether he paid all cash or not? A. No sir.

Q. And you do not know whether he paid in full or not, do you? A. I know he paid for the mill, but I do not know whether he paid right at the time he bought it or not.

Q. You do not know, of your own personal knowledge, that he paid for the mill? A. No sir, not at the time he bought it.

Q. You do not know of your own personal knowledge that he ever paid for it, do you? A. Yes sir.

Q. Of your own personal knowledge? A. Yes sir.

165 Q. What do yon know that enables you to state that he has paid for the mill? A. The papers.

Q. You haven't these papers here have you? A. No sir, I have them at home.

Q. Your grandfather has continued to live at Spigener Station, has he not, for the last twenty-five years? A. He has.

Q. He is residing there at the present time? A. Yes sir.

Q. And resided there in January, 1902, and several months prior thereto? A. Yes sir.

Q. When did your father die? A. He died eight years ago.

Q. Who conducted the mill after your father's death? A. My mother administered on my father's estate, and she and I run the business.

Q. Were you at the mill yourself? A. Yes sir.

Q. What were the conditions of the sale to W. S. Thornhill?

The Solicitor for Complainants objected to the question, because it is irrelevant and illegal, and calls for illegal testimony.

A. It was a cash transaction.

Q. To whom was the cash paid? A. It was paid to Mrs. M. J. Goree.

Q. Were you present at the time it was paid? A. Yes sir.

Q. Where was it paid? A. At Wetumpka.

Q. How many times have you been at Spigener Station in the last six years? A. I could not tell you how many times.

of Goree.

Q. Can you estimate the number of times? A. No sir; sometimes I go twice a week and sometimes it is once a month, and I could not tell you.

Q. What was the occasion of your going to Spigener Station? A. I have property there—the estate of my father.

Q. What kind of property? A. Land.

Q. What kind of lands? A. Farming lands.

Q. Any timbered land? A. No sir, the timber has all been cut off of it.

Q. How long ago did you cut the timber off? A. Eight years ago.

Q. Do you know whether your grandfather owns 166 any timber land or not? A. No sir, he does not.

Q. Do you go over to see your grandfather every time you go to Spigener Station? A. Yes sir, nearly every time.

Q. How many children has your grandfather living? A. He has three.

Q. How many of the three are sons? A. Neither of them; there was but one boy in the whole family.

Q. Is your grandfather pretty well known throughout the county? A. Yes sir.

Q. What business has he been engaged in for the last twenty-five years? A. In the mercantile business.

Q. What do you mean by that? A. Keeping a store.

Q. Where? A. At a little place called Cold Springs, where he has lived all his life.

Q. What line of goods does he handle? A. Everything in the way of dry goods, notions, shoes and groceries.

Q. Anything else? A. He handles hardware.

Q. Anything else? A. He handles a whole lot of things, but these are the principal ones.

Q. What else does he handle? A. I could not begin to call all of them.

Q. Name some of them? A. Those are the principal things.

Q. Name some of the things? A. Then he runs a cotton gin.

Q. Was he engaged in any other kind of business? A. That is all.

Q. You have mentioned all the various occupations in which your grandfather has been engaged for the last twenty-five years? A. Not for the past twenty-five years.

Q. I mean for the past six or seven years? A. Yes sir.

Q. Does your grandfather still own the store? A. Yes sir.

Q. Did I understand you to say that your grandfather was sick? A. Yes sir.

Q. Did he expect you to come and testify in this case?

The Solicitor for Complainants objects to the question because it is illegal and irrelevant, and calls for illegal testimony.

A. He did not know anything about it.

167 Q. When did you first hear of this case? A. Yesterday afternoon.

Q. Who spoke to you? A. Mr. Lull, a lawyer at Wetumpka.

Q. What did he say to you? A. He said that Mr. Steiner wanted me here today to testify in a case with which my father was concerned, and that I would not know the substance of the case until the questions were asked.

Q. Have you seen any correspondence relating to this case? A. I have not.

Q. Nor read any? A. No sir.

Q. Did Mr. Lull tell you that you were to come because your grandfather was not able to come? A. Yes sir.

Q. What has been your occupation for the last five or six years, beginning six years ago—beginning with January, 1897? A. I was in school at that time.

Q. For how long? A. For a year.

Q. What did you do after leaving school? A. I went into the mercantile business at Wetumpka.

Q. What do you mean by "mercantile business"? A. Buying and selling goods.

Q. What kind of goods? A. All kinds.

Q. Name them? A. Dry goods, notions, shoes, hats, clothing, hardware, gents furnishing goods &c.

Q. Were you in business for yourself? A. Yes sir.

Q. Have you followed that business continuously since the time you left school? A. I have not.

Q. How long did you continue to follow that business? A. One year, then I went into the dray business at Wetumpka.

Q. How long were you engaged in the dray business? A. I have been engaged in that the rest of my time, up to the present date.

of Goree.

Q. You have not been engaged in business with your grandfather? A. No sir.

Q. You do not know what property your grandfather has —what his interests are? A. Yes sir.

Q. Of your own knowledge? A. Yes sir, of my own knowledge.

Q. Do you know what all his property consists of? A. Yes sir.

168 Q. How do you know it? A. I know it by his papers —his deeds and mortgages.

Q. You mean you know that your grandfather owns property covered by the deeds and mortgages? A. Yes sir.

Q. You do not know that he owns anything else—he may own other interests than those you know of your own personal knowledge, may he not? A. He does not own any more.

Q. For all you know of your personal knowledge, he may own other property, may he not? A. No sir, because I have been helping him attend to his business for the last three years.

Q. How far is Wetumpka from Montgomery? A. It is about eighteen miles, about 14 one way and 16 the other.

Q. What line of railroad is it on? A. Louisville & Nashville.

Q. Is it south or north? A. From here it is sort of north-west.

Q. How far is it from Spigener Station? A. It is nine miles.

Q. On a direct line of railroad? A. It is further by railroad. It is a direct line—you can go on the railroad.

Q. You have been engaged in the dray business for yourself at Wetumpka, continuously for the last five years? A. No sir, for the last four years.

J. S. GOREE.

Notary's fee,.....$10.00.
One day's attendance of witness James Statham Goree, and 36 miles traveled, 18 miles coming and 18 going, paid him, ...$ 6.35.

$16.35.

Paid by Complainants.

W. J. MAUK,
Notary Public.

(Seal)

169 United States of America,
Middle District of Alabama, } ss.
Southern Division,

Certificate of notary.

I, W. J. Mauk, a Notary Public within and for Montgomery County, in the State of Alabama, do hereby certify that the reason for taking the foregoing deposition is, and the fact is that the testimony of said witness is material and necessary for the complainants in the cause in the caption of the said deposition mentioned, and that the said witness lives, and at the time of the taking of the said deposition did live at Wetumpka, in the county of Elmore, and state of Alabama, more than one hundred (100) miles from the city of Chicago, in the County of Cook and State of Illinois, where the Court at which said cause is to be tried was appointed by law to be held.

I further certify that notification of the time and place of the taking of the said deposition made and signed by the solicitors for the complainants was duly served on the solicitors for the defendants, to be present at the taking of the said deposition, and to put interrogatories to the said witness if they might think fit.

I further certify that on the 21st day of October, 1902, I was attended at the place named in the said notification for the taking of the said deposition, by R. E. Steiner, solicitor for the complainants, and Chas. O. Loucks, solicitor for the defendants and also by the witness James Statham Goree, who was of sound mind and lawful age; and the said witness was by me carefully examined, cautioned and sworn to testify to the truth, the whole truth and nothing but the truth; that the said deposition was taken down in short-hand by me, W. J. Mauk, and by me reduced to type writing; that after carefully reading the same to the said witness, he subscribed
the same in my presence; that I retained the said depo-
170 sition in my possession for the purpose of sealing and
directing the same with this certificate of the reasons aforesaid for taking the said deposition, with my own hand to the court for which the same were taken.

And I do further certify that I am not of counsel for or attorney for either of the parties in the said deposition and caption named, or in any way interested in the event of the said cause in the said caption named.

In witness whereof, I have hereto set my hand and affixed my notarial seal, this 21st day of October, in the year of our Lord one thousand nine hundred and two.

W. J. Mauk,
(Seal). *Notary Public.*

(Endorsed) Filed Oct. 23, 1902, Marshall E. Sampsell, Clerk.

171 United States Circuit Court.

Northern District of Illinois.

Mary B. Dun, Robert Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the will of Robert G. Dun, deceased, *vs.* Lumbermen's Credit Association, William Clancy and Burton W. Stadden,	In Equity. Notice.

To Messrs. Frederick H. Atwood, and Frank B. Pease, Solicitors for Defendants.

Gentlemen:

Please take notice that on Friday, August 15, 1902, at ten o'clock A. M. of said day, before the Hon. John A. Shields Clerk of the United States Circuit Court for the Southern District of New York, in the city and State of New York, and at his office room No. 78 in the Post Office Building of said city, or as soon thereafter as practicable, we shall proceed to take testimony in behalf of the complainants, and at that time and place we shall examine as witnesses and take the depositions of Robert Dun Douglass, Lincoln Goodman, Joseph Payez and James Furlong, resident and doing business in said State of New York, and more than one hundred miles from the place of hearing of this cause, also the testimony and depositions of other persons, whose names will be furnished from time to time on behalf of the complainants.

You are invited to attend and cross examine if you so desire. Not

HOYNE, O'CONNOR & HOYNE and
OFFIELD, TOWLE & LINTHICUM,
Solicitors for complainants.

Chicago, July 29, 1902.

172 Chicago, July, 29, 1902.

Copy of the above notice received this 30th day of July, 1902.

ATWOOD & PEASE,
Solicitors for Defendants.

UNITED STATES CIRCUIT COURT,

Northern District of Illinois.

Mary B. Dun, Robert Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the will of Robert G. Dun, deceased,
vs.
Lumbermen's Credit Association, William Clancy and Burton W. Stadden,
} In Equity.

At the City, County and State of New York, this 15th day of August, A. D. 1902, at ten o'clock A. M. of said day, before me, John A. Shields, special examiner and clerk of the United States Circuit Court for the Southern District of New York, at my office in the Post Office Building, New York City, personally appeared Mr. Francis L. Minton and Mr. Charles K. Offield, in behalf of complainants and Mr. Frank B. Pease in behalf of the defendants.

And thereupon, the following proceedings were had, pursuant to notice and the attendance of counsel:

Complainants called as a witness in their behalf Mr. ROBERT DUN DOUGLASS, who being first duly sworn by me, deposes and testifies as follows, in answer to interrogatories propounded by Mr. Offield. Dep

173 Q 1 Please state your name, age, residence and occupation? A Name, Robert Dun Douglass; age 57; resi-

dence Orange, New Jersey, occupation, general manager of R. G. Dun & Company.

Q 2 The complainants in this case? A Yes, sir.

Q 3 Now long have you been such general manager of the complainants as they now stand and of their predecessors? A I was general manager before Mr. Dun's death for about five or six years, and before that I was among the managers, but not the general manager, and I have been the chief executor since Mr. Dun's death, which occurred in November, 1900. At that time the trustees qualified about a month later, and they appointed me as chief executor, and I have held the office since.

Q 4 And the complainants have done business since that time to the present time, have they? A Just the same, right along, without any change.

Q 5 Prior to November, 1900, in what capacity was this business now carried on by the complainants carried on by the then predecessors of the complainants? A The business was owned by Mr. Dun since he was the proprietor and owner, and I was his nominal partner and general manager.

Q 6 For how many years had such business been carried on by Mr. Dun prior to his death as you have stated? A For forty odd years. Well, really, for sixty years. You might say for forty years.

Q 7 Will you please state the general character of the business carried on by the complainants and by their predecessor, Mr. Robert G. Dun, as you have stated? A The general character of the business was the reporting of merchants and manufacturers and business men generally
174 throughout the United States, and from that about forty years ago evolved the general reference book in which, by signs and otherwise, we fixed the credit and financial rating of business men throughout the United State.

Q 8 Was the R. G. Dun, deceased, as you have stated, in November, 1900, the R. G. Dun universally known and recognized as the owner and manager of the commercial agency report of that name?

Mr. Pease: Objected to as calling for a conclusion of the witness, I don't suppose he has any personal knowledge on that subject, and as immaterial.

A. He was.

Q 9 Will you please state approximately at least the extent of the business of the complainants as to volume and

value or assets especially during the year 1901, and generally at least the care and attention and pains which the complainants take to render authentic and accurate the information and book reports and references which they furnish their customers.

Mr. Pease: I object to that question as being double and involved.

A We have about one hundred and sixty branch offices in the United States, covering every city of any size, we have from two thousand three hundred to two thousand five hundred employees, and there isn't a particle of territory but what is fully covered by our own travelling representatives from once to twice a year.

Mr. Pease: I move to strike out that part of the answer stating that there isn't a part of the territory but that is covered by the travelling representatives of the complainants for the reason that it does not appear to be a matter within the personal knowledge of the witness.

175 The Witness: (Continuing) We also are at a yearly expense of from two millions and a half to three millions a year to run the business.

Q 10 And the entire ultimate object and purpose of those expenses and this system of employment is to obtain as accurate information as possible of the subject matter represented by your reports and publications.

Mr. Pease: I object to the question as leading.

A Yes, sir.

Q 11 In what form do you communicate to your customers or patrons the essentials or results of these investigations and of the expenditure of this annual sum of money that you have just designated? A We get it in the shape of detailed information in answer to their special inquiries, that is sent out to our subscribers every day.

Mr. Pease: I move to strike out the answer as not responsive to the question.

Q 12 The Question was, please, in what form do you communicate in your own way the result or syllabus of these investigations you have made? A The result comes down in a nutshell to the rating in our reference book; that is the utlimate result of the detailed reports we have on record.

Mr. Pease: I move to strike out the answer as not responsive.

Q 13 As I understand you, then, you furnish to your cus-

tomers in book form the results or information syllabused and embodied in short form in your own way?

Mr. Pease: I object to the question as leading.

A Yes, sir; all our subscribers get a reference book of some kind.

176 Mr. Pease: I move to strike out the answer as not responsive.

Q 14 About how many subscribers have you as you thus indicate, and especially during the year 1901? A Fifty thousand more or less, I think more possibly.

Q 15 And this answer applied to and refers to your subscribers during the year 1901? A Yes, sir.

Q 16 How frequently do you collate and publish your reference books and furnish them to your subscribers? A They are issued four times a year, January, March, July and September.

Q 17 Were they issued four times during the year 1901? A Yes, sir.

Q 18 In what manner do you protect or attempt to protect the complainants, or do the complainants protect themselves, in the exclusive right and use of the publication and distribution of these reference books. A They are copyrighted.

Mr. Pease: I move to strike out the answer as not the best evidence.

The Witness: They are copyrighted; all our subscribers sign terms of agreement that the books shall be simply in their own confidential use.

Mr. Pease: I move to strike out that part of the answer which states, or attempts to state, the terms of the agreement between the complainants and their customers as not the best evidence.

The Witness: Our terms are printed in the first page of the reference book.

Mr. Pease: I move to strike out the statement of the witness as not responsive to any question.

177 Q 19 Were these books of reference copyrighted, as you have expressed it by the complainants, for the months of March, July and September, 1901?

Mr. Pease: I object to the question as leading.

A Yes, sir.

Mr. Pease: I move to strike out the answer as not the best evidence.

Q 20. Please look at the three books which I now show you

(showing witness books) and state what they are? A They are a general reference book of the mercantile agency

Q 21 Give the month—for what year and what month? A March, 1901, July, 1901, and September, 1901, It is distinctly stated on the outside of the cover that it is the property of R. G. Dun & Company.

Mr. Pease: I object to the statement of the witness and move to strike it out.

Q 22 Where were these three books of reference just identified by you, printed? A In R. G. Dun & Company's printing office, at 59 Park street, New York City.

Mr. Offield. Defendants' counsel here offers in evidence the three books of reference identified by the witness and requests that they may be marked respectively "Complainants' Exhibit Complainants' March, 1901 copyrighted Reference Book" "Complainants' Exhibit Complainants' July, 1901 copyrighted Reference Book" and "Complainants' Exhibit Complainants' September, 1901, copyrighted Reference Book."

Mr. Pease: I object to the offer for the reason that the copyright has not been sufficiently or properly evidenced.

Q 23 Did the complainants, during the year 1901, furnish to their subscribers, fifty thousand in number more or less, each a copy or duplicate original of these three books 178 on the table before you? A Yes, sir, they all had one of those books.

Mr. Pease: I move to strike out the answer, for the reason that it does not appear that the witness has any personal knowledge as to that matter whatever, and from the very nature of the situation he could not possibly have.

Q 24 For how many years, approximately, had the complainants, and their predecessor, Mr. R. G. Dun, so protected their commercial reports in book form for their customers by copyright, as shown by these books.

Mr. Pease: I object to the question, for the reason that it does not appear that the witness has any personal knowledge of the matter.

A For years and years.

Q 25 Were these three copyrighted exhibits printed from type set up within the limits of the United States? A Yes.

Q 26 By whom was this type owned? A By R. G. Dun and his heirs.

Q 27 The complainants at the present time? A The complainants at the present time.

Q 28 You have said, as I understand you, that this printing was done at the printing office of the complainants. Do you mean by that, that the complainants own the printing office? A Yes, sir, and always have.

Q 29 And employ the employees who do the printing? A Yes, sir.

Q 30 Is the office force employed in this printing office a portion of the two thousand five hundred employees you mentioned? A Yes, sir, I included those.

179 Q 31 You had those in mind? A Yes, sir. I had those in mind.

Q 32 About how many employees are there in the printing office of the complainants? A They run from one hundred to one hundred and twenty-five.

Q 33 I now call your attention to the copyright book of March, 1901, and also the copyright book of July, 1901, and September, 1901, and ask you why these books are published and circulated by you in such close and rapid succession; I mean I wish to know what is done by your 2500 employees between March, 1901, and for example, July, 1901, that necessitates or makes it necessary or advisable for you to print these books and send then to your customers in such apparently rapid succession at such vast cost. A It was really demanded by our subscribers owing to the great number of changes that are occurring every business day, averaging about 3000 a day right through.

Mr. Offield: Complainants' counsel asks defendants' counsel if he will admit the technical compliance with the statute in the publication and protection anticedently of these respective exhibits, or if he demands technical proof of the compliance with such statute.

Mr. Pease: I must ask you to prove it, Mr. Offield.

Q 34 I will ask you if the complainants complied technically in the first instance as to the deposit of title required by the statute as to these three respective exhibits with the Librarian of Congress.

Mr. Pease: I object to the question as leading and as calling for the conclusion and opinion of the witness, it not appearing that he has any personal knowledge.

A Yes, sir, I beg to state that I have personal knowledge of this, because every letter that went to the Librarian was signed by myself.

180 Mr. Pease: I move to strike out the statement of the witness as not responsive to the question, and for the

reason that the letters, if any such were written, would be the best evidence.

Q 35 I now call your attention to three separate papers, which apparently relate on their face to the three copyrighted books, exhibits offered in evidence, being respectively the certificate of the Librarian of Congress as to the reception and deposit of the title to the three respective copyright book exhibits, the certificate of the Librarian of Congress to the fact of the reception of two printed copies each of said respective exhibit copyright books and also the receipt of the Post Master of the city of New York acknowledging the reception respectively of such copyright exhibit books of March, July, and September, 1901, and will ask you if these several papers aggregating nine in number, as above indicated, three for each set of copyright book exhibits, were received by the complainants, and if they represent the facts as therein stated? A They were received by the complainants and state the facts.

Mr. Offield: Complainants' counsel here offers in evidence the paper identified by the witness and requests that they may be marked respectively Complainants' Exhibit Certificate of Librarian of Congress of complainants' deposit of title of March copyrighted book of 1901, Complainants' Exhibit Certificate of Librarian of Congress as to the deposit of two copies each of said copyrighted book, and complainants' exhibit Post Master's receipt therefor, Complainants' Exhibit Certificate of Librarian of Congress of
181 Complainants' deposit of July copyrighted book of 1901, Complainants' Exhibit Certificate of Librarian of Congress as to the deposit of two copies each of said copyrighted book and Complainants' Exhibit Post Master's receipt therefor; Complainants' Exhibit Certificate of Librarian of Congress of complainants' deposit of title of September copyrighted book of 1901, Complainants' Exhibit Certificate of Librarian of Congress as to the deposit of two copies each of said copyrighted book and Complainants' Exhibit Post Master's receipt therefor.

Mr. Pease: I object to the offer for the reason that the papers are not sufficiently proven and move to strike out the statement of the witness, or that part of the last answer of the witness in which he states that the facts as set forth in these papers are true, or to that effect. The Examiner marks the papers as requested.

Q 36 Two copies each of these certificates copyright ex-

hibits were deposited with the Librarian of Congress before being sent by you to any of your customers, as I understand you.

Mr. Pease: I object to the question as leading

A That is as I understand it.

Mr. Pease: I move to strike out the answer.

Q 37 I now call your attention to a book which I now show you and ask you if you know what it is? (Showing witness book). A No, sir, I never saw the book before. I could tell by looking at it, I suppose. It reads that it is the reference book of the Lumbermen's Credit Association.

Q 38 Do you know, personally, Mr. Douglass, anything about the defendants in this case? A I know that they have gotten up a reference book for some years. That is all I know by general reputation.

Q 39 But the particular reference book that I now
182 show you, and which appears to bear your name, as I understand it, you don't personally know the details of its history or contents? A No, sir, not personally.

Q 40 I now call your attention to that branch of business or industry represented in the three copyrighted book exhibits and which I suppose would be properly termed the lumber industry represents in comparison with the other large number of trades or industries covered and included in these three copyright book exhibits, whether it is an important industry or one of the minor industries really? A It is a very important industry, and it would strike me that it was very hard for anybody to get the names in those books unless they had branch offices everywhere with employees, so that they could be able to collect them.

Mr. Pease: I move to strike out that answer of the witness, beginning with "It would strike me," and what follows, as being the opinion or conclusion of the witness and not responsive to the question.

Q 41 How does the individual, we will call it business of parties engaged in this lumber trade or industry, compare in amount as to volume and value with the other leading industries represented in your book? Are there large or small sums of money, I mean, involved in each particular instance usually? A Well, I should think that there were rather large sums involved in the credits.

Mr. Pease: I move to strike out the answer as not responsive to the question at all.

Q 42 Can you state whether any unusual or particular

care is taken by the complainants as represented by these
183 three exhibit copyrighted books as to the particular trade or industry in lumber in the investigations made as to the parties carrying on that business.

Mr. Pease: I object to the question as leading.

A We do the same careful work with the lumber trade as with all the other trades represented in the book.

Mr. Pease: I move to strike out the answer as not responsive and being comparative.

Q 43 If you can state approximately, Mr. Douglass, I would like to know as to this particular lumber trade, or industry how much expense the complainants incurred, we will say for the year 1901, as represented by these three exhibits, in obtaining and locating and putting in final form, as shown by these exhibits, the information and authority for your customers as there contained. A It would seem to me, if original work was done on all those names in the lumber trade in that book and revised by the employees of the agency, it couldn't be done for less than $250,000.

Mr. Pease: I move to strike out the answer as not responsive and stating merely the opinion and conclusion of the witness.

Q 44 Has that original work been done, and is it represented by the three copyright exhibit books before you by the complainants? A It has been done in that way by the complainants. In reporting one trade we reports all the trades at the same time with our representatives, and consequently it is less expensive for us than if it was simply done in one line.

Mr. Pease: I move to strike out the statement of the witness as not responsive.

Q 45 From your long years of experience, and assum-
184 ing that this book which I now show you, which is marked on its title page as the reference book of the Lumbermen's Credit Association January, 1902, refers to the lumber trade alone, and assuming that the information contained in that book had to be originally collated from independent sources and as carefully as you collate the information for your customers obtained by you, what would you say would be approximately the cost and expense if such information is accurately presented, as is represented and contained in that book?

Mr. Pease: Objected to as immaterial and calling for the conclusion of the witness.

A If the information is got in the way you state, I should think it would cost at least $250,000 if not more.

Mr. Pease: I move to strike out the answer.

Q 46 Have you made any comparison between this reference book of the defendants, of January 1902, and that part or portion of the three exhibits copyright books of 1901 of the complainants before you, so that you can state whether or not this reference book of the defendants is copied or duplicated substantially from the three exhibits before you?

Mr. Pease: I object to the question as leading

A No, sir, I have not personally made the comparison.

Q 47 Not to any extent? A Not to any extent.

Cross-Examination by Mr. Pease.

XQ 48 How many employees has R. G. Dun & Company in its New York office? A Including those of the printing office, we have about 450.

XQ 49 Of course you haven't personal knowledge as to all of the details of the different branches of that office and the business transacted in it, have you? A I have very good knowledge of all the detail work that goes on in the office.

185 XQ 50 You don't mean to say that it all passes under your supervision, by any means? A No, sir.

XQ 51. Only a small part of it? A Yes, I keep the run of it.

XQ 52. Well, only in a general way? A In a general way.

XQ 53 Did you personally deposit or see deposited with the Librarian of Congress the two copies or any copy of eithe of these reference books offered in evidence? A No, I did not personally see them; of course, I was in New York.

XQ 54 Did you personally deliver by mail or express to your subscribers one each of the copies of these reference books? A I caused it to be done.

XY 55 That is not an answer to my question, Mr. Douglass? A Do you want to know whether I personally went around and delivered those books, is that it?

XQ 56 The question will indicate to your mind what I wish to know, and it is very easily answered.

(Question repeated)

A No.

XQ 57 Do you personally, and from your own knowledge, in detail I mean, know what territory is covered by your travelling men or representatives? A You don't word it exactly right. Your question is not explicit in regard to the work that we do.

XQ 58 I understood you to say that you had a large number of travelling men out, and that they visited certain territory? A Yes.

XQ 59 Now, my question is, do you personally know of your own knowledge just what territory they visit or cover? A We have the country divided into branch offices and subbranches, and these offices make reports to the New York office from time to time as to the work that is being done
186 in the revising where they have their travellers, &c., and that information comes to me, so I have a general run of how the country is being revised and how the work is done.

XQ 60 But the investigations which are made by your representatives in a given territory are under the direction of the local office in that territory, are they not? A Yes.

XQ 61 And as to that office you have no particular or personal knowledge? A The employees in that office are under the direction of the manager of that office.

XQ 62 What do you use in your key to indicate the capital rating of persons reported on, Mr. Douglass? A I don't understand that question.

XQ 63 What is it, a letter or a character or a figure? A We use a letter for the capital rating and a figure for the credit rating.

XQ 64 How many characters and letters or figures are used in your key? A Seventeen or eighteen as to capital.

XQ 65 They appear on the first page of your reference book? A On the first page of our reference book and three or four grades of creit.

XQ 66 Well, which is it? A It is three in some instances and it is four in others.

XQ 67 You have no way of determining, have you, as to the proportion of this annual expense that is expended on the lumber trade? A I couldn't say from my own knowledge how much is expended on the lumber trade any further than I have stated previously.

XQ 68 How long have you known of or have you had knowledge of the publication of the reference book of the Lumbermen's Credit Association, the defendants? A I

have heard of the book for some time, eight or ten years, I should think.

187 XQ 69 Not longer than that? A I don't know as I have.

XQ 70 Do you know where this book came from? A I don't know where it came from. I don't know anything about it.

XQ 71 You never saw it before? A I never saw it until to-day. This is the first time I have seen the book is to-day.

XQ 72 Your statement as to the annual expense incurred in the conduct of this business by the complainants, I suppose is merely an estimate, isn't it? A It is an estimate, what I should judge it would cost to get the book up from original sources, and I don't believe it could be done for a cent less.

XQ 73 (Previous question repeated) A What do you refer to.

XQ 74 Two and a half to three millions you said? A What is the question you asked me?

XQ 75. If that isn't an estimate merely? A No, that is not an estimate.

XQ 76 It is not an estimate? A No, sir.

XQ 77 Do you know how many names are included in each of these reference books, approximately? A From thirteen hundred thousand to fourteen hundred thousand.

XQ 78 Have you now, or did you have in 1901, or at any time in 1902 any other reference books in your office? A No, sir.

XQ 79 You swear to that positively? A I swear to that positively.

XQ 80 And you have personal knowledge as to that fact? A I have personal knowledge, yes. If it was otherwise, I would know it quick.

188 *Re-direct by Mr. Offield.*

RDQ 81 Who is the leading or practically the only competitor of the complainants in this business in this country?

Mr. Pease: Objected to as immaterial.

A The Bradstreet Company.

RDQ 82 During the forty years which you have been connected with the complainants and their predecessor, Mr. R. G. Dun, have you ever yourself seen or have you ever

known of any reference books or any information in any form acquired or owned by your Bradstreet competitor being used by or in the possession of, or known to in any way the complainants or their predecessor, R. G. Dun & Co.? A No., sir, it has never been done in the history of our house. Every report and every writing we have is our own.

RDQ 83 You have confined your answers here, as I have understood you, to the book shown by these exhibits of 1901 as used in the United States. Does your business extend beyond this country in the circulation and furnishing of these books, and if so where? A Yes, sir, England, Germany, France South Africa and Australia.

RDQ 84 On this Continent outside of the United States? A Canada, Mexico and Cuba.

RDQ 85 Without desiring to spread upon this record any eulogy or laudation of the complainants in this case I will ask you as to the character and reputation and standing of the complainants and the consideration that is given by your 50,000 customers to the information that is furnished them through your reference books as represented by these three exhibits of 1901?

Mr. Pease: Objected to as incompetent, irrelevant and immaterial.

Mr. Offield: What is the reputation of the complain-
189 ants and the consideration and estimation given to these records as furnished and shown by these exhibits to the respective trades represented thereby, and by your customers.

Mr. Pease: Same objections, continued.

A I think it is generally understood that these ratings are taken from other books—

RDQ 86 You do not understand the question evidently, Mr. Douglass, which is, what character and standing and reputation the complainants have for furnishing accurate and reliable knowledge as to the various industries and subject matters represented by their reference book as shown by the three copyright exhibits before you?

Mr. Pease: I object to the question as incompetent irrelevant and immaterial.

A I think the reputation of the house stands for itself, The reputation of the house is so well known and has been for a century that no house in the country has better.

Mr. Pease: I move to strike that out as not responsive

Re-Cross by Mr. Pease.

RXQ 87 When you say that no other reference book has been compiled by R. G. Dun & Co., you refer to the New York office within your knowledge? A That is where the book is compiled.

RXQ 88 Of course you have no personal knowledge as to the means used in the compilation of information in the branch offices? A Yes, I have.

RXQ 89 As I understand it, the information contained in these books covering the business in certain localities is compiled in the branch office located in that locality, is it not, and forwarded to your New York office? A Yes.

ROBERT DUN DOUGLASS.

Subscribed and sworn to before me this 21st day of Oct. 1902.

JOHN A. SHIELDS
Special Examiner and Clerk U. S. Circuit Court, Southern District of New York.

And thereupon complainants call as a witness in complainants behalf JOSEPH B. PAYEZ, who being first duly sworn, testifies as follows in answer to interrogatories propounded by Mr. Offield:

Q 1 Please state your name, age, residence and occupation? A Joseph B. Payez, 37 years of age, superintendent of R. G. Dun & Co's Printing Department, residence 73 Euclid Avenue, Brooklyn.

Q 2 Where is the Printing Department of the complainants in this case? A 57 to 59 Park street, this city.

Q 3 Does that company do the printing of all of what is called the reference books of the complainants and their predecessors, so far as you know? A They do.

Q 4 How long have you had charge of the printing office of the complainants? A For the past five years.

Q 5 I now call your attention to the three exhibits before you marked respectively "Complainants' Exhibit Complainants' March 1901, Copyrighted Reference Book," "Complainants' Exhibit Complainants' July 1901 Copyrighted Reference Book" and "Complainants' Exhibit Complainants' September 1901, Copyrighted Reference Book" and ask you if these three books and exhibits were printed in

191 the office of the printing company of the complainants and under your direction? A They were.

Q 6 At the times, or approximately the dates indicated upon the books themselves? A They were.

Q 7 And from type set up in the office in this city? A Yes, sir.

Q 8 How many, approximately, of these books were printed of each copyrighted edition of March, July and September, if you remember? A About 45,000 in three editions.

Q 9 Do you know yourself whether these three editions respectively were sent out to the customers of the complainants' here, and furnished them? A I have no knowledge regarding that.

Q 10 All you know is they were printed in the office? A Yes.

Q11 And where did you deliver them to A To the book binder.

Q 12 In each of these 45,000 copies of each edition, was the same printing matter exactly upon each copy as appears on these three exhibits before you, as, for example, referring to the statement "Copyright 1901 by R. G. Dun & Co." A Yes, sir.

Q 13 And that appeared on all of the different reference books printed by you during the five years you have been in their employment?

Mr. Pease: I object to that question as immaterial.

A Yes, sir.

Mr. Pease: I move to strike out the answer

Cross-Examination by Mr. Pease.

XQ 14 Where are the books bound? A 57 to 59 Park street.

192 XQ 15. That is in the floor above or the same building as the printing office? A Yes, sir.

XQ 16 Practically part of the same place? A Practically.

JOSEPH B. PAYEZ.

Subscribed and sworn to before me, this 21" day of Oct. 1902.

JOHN A. SHIELDS,
Special Examiner and Clerk U. S. Circuit Court, Southern District of New York.

And thereupon complainants call as a witness in their behalf MR. LINCOLN GOODMAN, who being first duly sworn, testifies as follows in answer to interrogatories propounded by Mr. Offield:

Q 1 Please state your name, age, residence and occupation? A Lincoln Goodman; 37 years of age, clerk with R. G. Dun & Company, residing at Ozone Park, Long Island.

Q 2 How long have you been in the employment of the complainants and their predecessor, Mr. R. G. Dun? A About twenty three years.

Q 3 At what place? A 314 Broadway, I think was the first place I went to.

Q 4 Always in this city? A Always in this city, yes, sir.

Q 5 What were your special duties as clerk, especially in the year 1901? A Well, I was clerk in charge of the reference book department.

Q 6 And that gave you knowledge of the printing and circulation or distribution of what is known as the reference books as shown by the three exhibit copyright books on the table before you?

193 Mr. Pease: Objected to as leading.

A Yes, sir.

Q 7 What were your duties and what is your knowledge in reference to the distribution of these reference books as shown by these exhibits, for example in the year 1901? A Well, I looked after the shipping and gave instructions as to the shipping and so forth, and shipped the books to our subscribers in this city; that is, I employed men to express the books to subscribers in the city.

Q 8 And you have personal knowledge of this fact? A Yes, sir.

Q 9 Now, were any of the reference books of the year 1901, calling your attention particularly to the three exhibit copyright books before you, distributed or sent out to any customer as to any of these books prior to the first day of the month identified therein, namely, the months of March, July and September, 1901,? A Sent out to our customers?

Q 10 Yes? A No, sir.

Q 11 Do you know personally that the law was complied with in the copyrighting of these books as to the deposit of title and as to furnishing the Librarian of Congress with

two printed copies each, for example, of the three exhibits before you as shown by the three sets of receipts relating to such exhibits respectively.

Mr. Pease: I object to the question for the reason that it is leading and calls for the conclusion of the witness.

A I do, sir.

Mr. Pease: I move to strike out the answer, it not appearing that the witness has any personal knowledge.

194 Q 12 Do you know that the titles of these respective exhibits were deposited, and the two printed copies were deposited as identified by the respective receipts and certifications of the Librarian of Congress and the receipts of the post master of this city before you?

Mr. Pease: Objected to as leading and calling for the conclusion of the witness.

A I do sir.

Mr. Pease: I move to strike out the answer.

Cross-Examination by Mr. Pease.

XQ 13 You say you gave instructions with reference to the shipping of these books as to customers outside of New York City? A Shipping to our agents, yes, sir.

XQ 14. That is, to your agents? A To our branch offices.

XQ 15. And you had nothing to do with the matter of delivery beyond that as to those books? A After they reached our branch offices?

XQ 16 Yes. A No, sir.

XQ 17 Now, as to the city deliveries, you say you employed men to ship the books? A Yes, sir, and looked after it daily.

XQ 18 You have no knowledge beyond that as to what was done with or what became of these books? A Well, I have my system to watch such things.

XQ 19 No, I want your personal knowledge? A That would be my personal knowledge, from the returns coming in. I see that the books go out in the morning and my system shows that the books were delivered.

XQ 20 Well, you didn't see them after that? A After the books reached the subscribers.

XQ 21 No, after they were delivered. You did not see

them, I suppose, in the possession of the men, did you.
195 Your duties were performed in the office? A No, I go to the bindery every morning on the delivery of those books. I see that the books are put on the wagon and we furnish three men on the wagon to see that they are delivered.

XQ 22 That is all you know about it personally; that is the last you see of them? A Then I get my returns in the evening.

XQ 23 When were these books sent out? A What books?

XQ 24 These respective editions, these three, March, July and September, 1901, I think? A I should say about the first of the March.

XQ 25 What do you mean by that? A Well, it may be the last day of the month previous.

XQ 26 How about the other books? A Well, the same rules applies to them all. The idea is to get the books to the subscribers from the first to the tenth of the month of issue.

XQ 27 When were they sent out in the city here? A After the first of the month of issue.

XQ 28 Are the books sent direct to customers from this office to any territory outside of the city? A Yes sir.

XQ 29 What territory? A Well, what we consider our Now York district, which takes in Westchester County, all of Long Island and part of Jersey.

XQ 30 When were they sent to those customers? A After the first of the month of issue.

XQ 31 What, if any, knowledge have you had with reference to the issuing of the reference books of the defendant Lumbermen's Credit Association? A I have no personal knowledge of it at all.

XQ 32 And haven't had? A No, sir.

XQ 33 You didn't know there was such a book being
196 issued? A Yes, I knew it, but I haven't seen one until today.

XQ 34 How long have you known that? A I suppose a couple of years or something like that; I couldn't say that positively; about two years.

XQ 35 You never saw one until to-day? A Never saw one until to-day.

LINCOLN GOODMAN.

Subscribed and sworn to before me this 21st day of Oct. 1902.

JOHN A. SHIELDS,
Special Examiner and Clerk U. S. Circuit Court Southern District of New York.

And thereupon complainants call as a witness in complainant's behalf JAMES H. FORLONG, who being first duly sworn, testifies as follows in answer to interrogatories propounded by Mr. Offield.

Q 1 Please state your name, age, residence and occupation? A James H. Forlong, 56 years of age, residence 234 East 50th street, Borough of Manhattan, City of New York; I am chief or head proof reader in R. G. Dun & Co.

Q 2 What have you to do with the printing of the reference books of R. G. Dun & Co. particularly as represented by the three exhibit copyrighted books before you of March, July and September, 1901? A I am engaged as a proof reader reading on the books sometimes.

Q 3 And were you so engaged on these three exhibits before you? A Well, yes, partially.

Q 4 Do all of the names and addresses appearing in these three copyright book exhibits before you, represent in
197 each and every instance actual parties whose names appear therein.

Mr. Pease: I object to the question as leading and calling for the conclusion of the witness, it not appearing that he has any personal knowledge.

A Not in every instance.

Mr. Pease: I move to strike out the answer.

Q 5 If there are any names appearing in either of these three exhibits before you, that are fictitious and without existence, will you please state what those names are, identify them in the books, and if you know state the reason of the presence of such fictitious names and apocryphal persons in such books?

Mr. Pease: I object to the question for the reason that it has not been shown that any such names appear in the book or books in question, and for the further reason that it is immaterial, incompetent and irrelevant.

Mr. Offield: Confine your answer in this connection to such fictitious names as appear in connection with the lumber trade or industry in the three books book exhibits before you?

Mr. Pease: Same objection.

A Yes, I can show the names.

Q 6 And what are they there for?

Mr. Pease: That I object to.

A I don't know.

Q 7 Who put the fictitious names in these books, so far as the lumber trade or industry is concerned, as shown by the three exhibits of March, July and September, 1901?

Mr. Pease: I object as incompetent, irrelevant and immaterial and that it does not appear that there are any such names in the book, it not having been shown or proven.

198 A I did.

Q 8 What did you put them in there for? Is it any part of your duty as a proof reader to put in fictitious names or names that do not exist?

Mr. Pease: Objected to as incompetent, irrelevant and immaterial.

A Not unless instructed to do so.

Q 9 Were you instructed to put these names in these three exhibit books before you?

Mr. Pease: I object to the question as incompetent irrelevant and immaterial.

A Yes sir.

Mr. Pease: I move to strike out the answer.

Q 10 Who coined or originated these fictitious names appearing in these two book exhibits before you?

Mr. Pease: Objected to on the ground that it is incompetent, irrelevant and immaterial, and calls for the conclusion of the witness, it not yet appearing or having been shown that there are any such names in the books.

A I did.

Mr. Pease: I move to strike out the answer.

Q 11 Will you now turn to the three books before you, of March, July and September, 1901, copyrighted and so forth and point out and identify in those books as to the lumber trade or industry such unreal and fictitious names as appear in such books in connection with that industry? Take for

example, the exhibit Copyrighted Book of July, 1901? A There is one (Pointing to book)

199 Q 12 Read it off? A Crawford, Theodore C. Sashes, doors and blinds, D-1-1/2.

Q 13 What page is that on? A Page 13, State of Alabama.

Q 14 Town? A Huntsville.

Q 15 Turn to another one, for example? A Selma, Alabama; the name is Curtis & Payne. Business, planing mill. G. 3.

Q 16 What page A Page 21.

Q 17 Do these two fictitious names appear in the reference book, March Exhibit of 1901? A No, sir.

Q 18 Do they appear also, and are they reproduced in the September book? A Yes, sir.

Q 19 Why are they not in the March boook, exhibit of 1901?

Mr. Pease: Objected to as immaterial.

A Because they were not put in or ordered in.

Q 20 Were they thought of or coined by you at that time as early as March?

Mr. Pease: I object.

A No, sir.

Mr. Pease: I move to strike out what his thoughts were.

Cross-Examination by Mr. Pease:

XQ 21 How long have you been employed by R. G. Dun & Co. as a proof reader or otherwise? A About thirty years.

XQ 22 Where has your employment been? A New York City.

XQ 23 What part or portion of these three reference books did you do the proof reading on? A Principally on the revision.

XQ 24 What part of each book is revised? A It is all revised.

XQ 25 What part of the revision did you do the proof-reading on? A I assisted in the revision of the pages as they were corrected by the compositors afterwards.

200 XQ 26 Did you proof read the entire book? A I did not read but very little of it.

XQ 27 How many proof readers worked on each of these books? A It ran from 16 to 20 to 22.

XQ 28. When were you at Huntsville, Alabama last? A I never was in Huntsville.

XQ 29 You never were? A No, sir.

XQ 30 Who were in 1901 engaged in the lumber business in Huntsville, Alabama, if you know, from your own personal experience? A I don't know.

XQ 31 Who was engaged in the sash, door and blind business at Huntsville, Alabama, in November, 1901, if you know from your own personal knowledge? A From my own personal knowledge, I don't know.

XQ 32 What county is Huntsville located in? I couldn't tell you just now.

XQ 33 What other towns are there in the same county in which Huntsville is located in which there are people or parties engaged in the lumber business or the sash, door and blind business? A I don't know.

XQ 34 Have you no knowledge? A No, sir.

XQ 35 When were you at Selma, Alabama, if at all? A Never.

XQ 36 Who were engaged in the lumber business or planing mill business in Selma, Alabama, during 1901, if you know? A I don't know.

XQ 37 What county is Selma, Alabama, located in? A I don't know.

XQ 38 What other towns are there in the same county in which there are parties engaged in the lumber business or planing mill business? A I don't know.

XQ 39 What if any, knowldge have you, aside from that contained in these reference books, as to the financial
201 standing or credit of any persons or parties engaged in the lumber business or planing mill business or sash and door business in either Huntsville or Selma, Alabama? A No knowledge.

XQ 40 What, if anything, did you actually do in connection with the preparation and printing of the respective editions of these three reference books, aside from proofreading upon them? A Nothing.

XQ 41 How came you to be a witness in this case; who first spoke to you about it? A I was asked to come over here; that is all.

XQ 42 By whom? A By Mr. Payez.

XQ 43 What did he say to you? A I was told I was wanted over at the Broadway office.

XQ 44 Where are you located? A 57 and 59 Park street.

XQ 45 Have R. G. Dun & Co. more than one place of business in New York City? A They have only one printing office that I know of.

XQ 46 That is located on Park Street? A Yes, sir.

XQ 47 And their general offices are on Broadway? A On Broadway.

XQ 48 Is that all that he said to you? A That is all.

XQ 49 Whan did he say that to you? A Yesterday.

XQ(50 When did you first know that you were to be a witness in this matter? A The day before yesterday.

XQ 51 That was the first you knew of this case or that you were to be a witness in it? A I didn't know anything about what I was wanted for.

Q 52 Was that all that Mr. Payez said to you? A That is all.

202 XQ 53 Have you talked with anyone else since then with reference to appearing as a witness here, or what you were wanted for? A No.

XQ 54 When is the proof reading done? A During working hours in the day.

XQ 55 I mean during what period of the preparation of the book—at what stage? A It is principally done during the month previous to publication.

XQ 56 At what stage or progress of the work is it done? After it comes from the printers office in the galley, and just before the publication, is that right? A Well, there is a proof taken of each galley or page which goes to the reader and is read by him.

XQ 57 And that is the first that you see of the material is it? A That is the first I see of it in the printed form.

XQ 58 What form do you see it in before, if you see it at all? A Well, there is the copy comes from the different branch offices.

XQ 59 What have you to do with that? A I have nothing to do with it.

XQ 60 Then you don't see it personally? A I do see it sometimes; yes, sir.

XQ 61 Well, only casually? A Casually.

XQ 62 You have nothing directly to do with it? A No.

XQ 63 Do these two names that you have mentioned appear on the same page which you have mentioned, I mean numerically the same pages, in the September edition? A Yes, but the pages are the pages of the State and not of the book in each book, the book not being paged consecutively from the first page to the end of the book.

203 XQ 64 When you first saw the proofs of pages 13 and 21 of the State of Alabama in each of these books, being the July and September editions, 1901, were they in the same condition that they are now with reference to the subject matter appearing upon them? A. I don't see the pages before it was printed.

XQ 65 You didn't read the proof of these pages, then? A No.

Re-Direct Examination by Mr. Offield.

RDQ 66 Is it not a fact that you originated and coined these fictitious names as to this particular industry, the lumber trade, as appears in the July and September exhibits before you, for the especial and sole purpose as a trap to ascertain positively whether or not competitors or third parties were not copying and stealing the information and facts as furnished in the complainants' reference book to their customers in this industry?

Mr. Pease: I object to the question on the ground that it is not re-direct examination, that it is leading and that it calls for the opinion or conclusion of the witness, or rather the operations of his mind.

A Yes.

Mr. Pease: I move to strike out the answer.

RDQ 67 Now, so far as you know, no such persons as are represented by the fictitious names referred to by you, namely, Theodore Crawford and Curtis & Payne, exist or do business either in the lumber trade or any other business anywhere in the United States, do they?

Mr. Pease: I object to the question as not re-direct examination, but a part of the direct, and for the further

204 reson that it has not been shown or proven that the names are fictitious or that he has any knowledge as to the localities in question or the parties engaged in business in either place, and that it calls for the conclusion and

opinion of the witness, and for the further reason that the question is leading.

A So far as I know, no.

JAMES H. FORLONG.

Subscribed and sworn to before me, this 22nd day of Oct., 1902.

JOHN A. SHIELDS,
Special Examiner and clerk U. S. Circuit Court Southern District of New York.

Mr. Offield: Complainants' counsel here states that the deposition of this witness closes the taking of testimony under the notice given, and hereto attached.

205 Complainants' Exhibit, Certificate of Librarian of Congress of Complainants' Deposit of Title of March Copyrighted Book of 1901. Exhibit cate o of Co depos of Ma

J. A. S.
Ex. & Clerk U. S. C. C. S. D. of N. Y.

Class A XXc. No. 1672.

Library of Congress, to-wit:

Be it remembered,

That on the twenty-fourth day of January, 1901,

R. G. Dun & Company of New York N. Y.

have deposited in this Office the title of a book the title of which is in the following words to-wit:

The Mercantile Agency Reference

book (and key) containing ratings of merchants, manufacturers and Traders generally, throughout the United States and Canada, March, 1901. Vol. 132 R. G. Dun & Co., New York.

the right whereof they claim as proprietors in conformity with the laws of the United States respecting Copyrights.

Office of the Register of Copyrights,

Washington, D. C.

HERBERT PUTNAM,
Librarian of Congress.
By THORWALD SOLBERG,
Register of Copyrights.

I hereby certify that the foregoing is a true copy of the original record of copyright. In Witness Whereof, the seal

of the Librarian of Congress has been hereto affixed this twenty-fourth day of May, 1902.

Office of the Register of Copyrights,
Washington, D. C.

HERBERT PUTNAM,
Librarian of Congress.
By THORWALD SOLBERG,
Register of Copyrights.

(Seal)
Written J. H. L. O.
Revised H d K. W.
Mailed. W. J. P.
Form E.
From January 1, 1901.
(15, IV, 1901. 3,000.)

206 Complainants' Exhibit as to the deposit of two copies of March copyrighted book of 1901.

J. A. S.
Ex. & Clk. U. S. C. C. S. D. of N. Y.

The Library of Congress,
Copyright Office.

Washington, D. C.

I hereby certify that two printed copies of the book entitled The Mercantile Agency Reference book (and key) containing ratings of merchants, manufacturers and Traders generally, throughout the United States and Canada, March 1901, Vol. 132 R. G. Dun & Co., New York were deposited in this Office by R. G. Dun & Company of New York, N. Y. on the twenty-fifth day of February, 1901, and were credited on entry No. 1672 of Class A of 1901, to complete copyright.

In Witness whereof the seal of the Librarian of Congress has been hereto affixed this twenty-fourth day of May, 1902.

HERBERT PUTNAM,
Librarian of Congress.
By THORWALD SOLBERG,
Register of Copyrights.

(Seal)
Written J. H. L. O.
Revised H. d. K. W.
Mailed W. J. P.
(20, iii, 1902—1,000)

207 Complainants' Exhibit Post-Master's Receipt for Copyrighted book of 1901. Exhibit—master for co book.

J. A. S.
Ex. & Clerk U. S. C. C. S. D. of N. Y.

N. Y. 26—E. Ed. 22—10,000.

Post Office, New York, N. Y.

N. Y. 2/23, 1901.

Received from R. G. Dun & Co., Two Packages addressed to "Librarian of Congress, Washington, D. C." containing Copyright Title in the following words:

The Mercantile Agency Reference Books, Key etc. of United States and Canada, March 1901, #1 & 2.

C. Van Cott,
Postmaster.

N. Y. P. O. Print.

208 Complainants' Exhibit, Certificate of Librarian of Congress of Complainants' Deposit of Title of July Copyrighted Book of 1901. Exhibit—cate of of Co deposi of July

J. A. S.
Ex. and Clerk U. S. C. C. C. S. D. of N. Y.

Class A XXc. No. 9907.

Library of Congress, to-wit:

Be it remembered,

That on the twenty-second day of May, 1901, R. G. Dun & Company of New York, N. Y. have deposited in this Office the title of a book the title of which is in the following words to-wit: The Mercantile Agency Reference book (and key) containing ratings of Merchants, Manufacturers and Traders generally throughout the United States and Canada, July 1901, Vol. 133 R. G. Dun & Co., New York, the right whereof they claim as proprietors in conformity with the laws of the United States respecting Copyrights.

Office of the Register of Copyrights,
Washington, D. C.

Herbert Putnam,
Librarian of Congress.
By Thorwald Solberg,
Register of Copyrights.

I hereby certify that the foregoing is a true copy of the original record of copyright. In Witness Whereof, the seal

Certificate of Librarian of Congress of title book.

of the Librarian of Congress has been hereto affixed this twenty-fourth day of May, 1902.

Office of the Register of Copyrights,
Washington, D. C.

HERBERT PUTNAM,
Librarian of Congress.
By THORWALD SOLBERG,
Register of Copyrights.

(Seal)
Written J. H. L. O.
Revised H d. K. W.
Mailed. W. J. P.
Form E.
From January 1, 1901.
(15, IV, 1901, 3,000)

Certificate of Librarian of Congress of July

209 Complainants' Exhibit as to the deposit of two copies of July copyrighted book of 1901.

J. A. S.
Ex. & Clk. U. S. C. C. S. D. of N. Y.

The Library of Congress,
Copyright Office.

Washington, D. C.

I hereby certify that two printed copies of the book entitled The Mercantile Agency Reference book (and key) containing ratings of merchants, manufacturers and Traders generally, throughout the United States and Canada, July, 1901, Vol. 133, R. G. Dun & Co. New York, were deposited in this Office by R. G. Dun & Company of New York, N. Y. on the twenty-seventh day of June, 1901, and were credited on entry No. 9907 of Class A of 1901, to complete copyright.

In Witness whereof the seal of the Librarian of Congress has been hereto affixed this twenty-fourth day of May, 1902.

HERBERT PUTNAM,
Librarian of Congress.
By THORWALD SOLBERG,
Register of Copyrights.

(Seal)
Written J. H. L. O.
Revised H. d. K. W.
Mailed W. J. P.
(20, iii, 1902—1,000)

210 Complainants' Exhibit Post-Master's Receipt for July Copyrighted book of 1901. Exhibit master

J. A. S.
Ex. & Clerk U. S. C. C. S. D. of N. Y.

N. Y. 26—E. Ed. 22—10,000.

Post Office, New York, N. Y.
N. Y. 6/26/1901.

Received from R. G. Dun & Co., Two Packages addressed to "Librarian of Congress, Washington, D. C." containing Copyright Title in the following words:

The Mercantile Agency Reference books (and key) of United States & Canada July 1901, issue #1 & 2.

C. VAN COTT,
Postmaster.

N. Y. P. O. Print.

211 Complainats' Exhibit, Certificate of Librarian of Congress of Complainants' Deposit of Title of September Copyrighted Book of 1901. Exhibit cate of Co depos

Class A XXc. No. 14332.

Library of Congress, to-wit:

Be it remembered,

That on the fifth day of August, 1901, R. G. Dun & Company of New York, N. Y. have deposited in this Office the title of a book the title of which is in the following words to-wit: The Mercantile Agency Reference book (and key) containing ratings of merchants, manufacturers and Traders generally throughout the United States and Canada etc. September, 1901, Vol. 134 R. G. Dun & Co., New York, the right whereof they claim as proprietors in conformity with the laws of the United States respecting Copyrights.

Office of the Register of Copyrights,
Washington, D. C.

HERBERT PUTNAM,
Librarian of Congress.

By THORWALD SOLBERG,
Register of Copyrights.

I hereby certify that the foregoing is a true copy of the original record of copyright. In Witness Whereof, the seal

of the Librarian of Congress has been hereto affixed this twenty-fourth d4y of May, 1902.
Office of the Register of Copyrights,
Washington, D. C.

HERBERT PUTNAM,
Librarian of Congress.
By THORWALD SOLBERG,
Register of Copyrights.

(Seal)
Written J. H. L. O.
Revised H. d. K. W.
Mailed. W. J. P.
Form E.
From January 1, 1901.
(15, IV, 1901—3,000)

Certificate of Librarian as to deposit of books.

212 Complainants' Exhibit as to the deposit of two copies of September, copyrighted book of 1901.

J. A. S.
Ex. & Clk. U. S. C. C. S. D. of N. Y.

The Library of Congress,
Copyright Office.
Washington, D. C.

I hereby certify that two printed copies of the book entitled The Mercantile Agency Reference book (and key) containing ratings of merchants, manufacturers and Traders generally, throughout the United States and Canada, etc. September, 1901, Vol. 134 R. G. Dun & Co. New York were deposited in this Office by R. G. Dun & Company of New York, N. Y. on the twenty-seventh day of August, 1901, and were credited on entry No. 14332 of Class A of 1901, to complete copyright.

In Witness whereof the seal of the Librarian of Congress has been hereto affixed this twenty-fourth day of May, 1902.

HERBERT PUTNAM,
Librarian of Congress.
By THORWALD SOLBERG,
Register of Copyrights.

(Seal)
Written J. H. L. O.
Revised H. d. K. W.
Mailed W. J. P.
(20, iii, 1902—1,000)

213 Complainants' Exhibit Post-Master's Receipt for September Copyrighted book of 1901. Exhi ma

J. A. S.
Ex. & Clerk U. S. C. C. S. D. of N. Y.

N. Y. 26—E. Ed. 22—10,000.

Post Office, New York, N. Y.
N. Y. August 24th, 1901.

Received from R. G. Dun & Co., Two Packages addressed to "Librarian of Congress, Washington, D. C." containing Copyright Title in the following words:

The Mercantile Agency Reference Book and Key etc of United States & Canada. Two Volumes, Sept. 1901, issue #1 & 2.

C. Van Cott,
Postmaster.

N. Y. P. O. Print.

214 United States Circuit Court, Certi

Northern District of Illinois.

Mary B. Dun, Robert Douglass, Francis L. Minton, and Walter D. Buchanan, Executors and trustees under the will of Robert G. Dun, deceased,

vs.

Lumbermen's Credit Association, William Clancy and Burton W. Stadden.

} In Equity.

Southern District of New York, } ss.
United States of America, }

I, John A. Shields, Clerk of the Circuit Court of the United States for the Southern District of New York, and Special Examiner Do hereby certify, that on the 15th day of August, 1902, at my office in the post office building in the City of New York, I was attended by Mr. Francis L. Minton and Charles K. Offield, Esq., of counsel for complainant and Frank B. Pease, Esq., of counsel for the defendants and by the witnesses Robert Dun Douglass, Joseph B. Payez, Lincoln Goodman, and James H. Furlong; that the said witnesses

who were of sound mind and lawful age having been first duly sworn, gave their depositions which by consent of counsel for the respective parties was taken down in the presence of the respective witnesses and from their statements by a stenographer appointed by me for that purpose by the consent of counsel for the respective parties. The stenographic notes having been afterwards reduced to writing by a typewriter and the said witnesses having read over their respective depositions severally subscribed and swore to the same in my presence.

I further certify that the reason for taking the foregoing depositions is that the witnesses are material and
215 necessary in the cause in the caption of the said depositions named and that they live at a greater distance than one hundred miles from the place of trial of the within entitled cause.

I further certify that a notification of the time and place of taking said deposition signed by Hoyne, O'Connor & Hoyne and Offield, Towle & Linthicum, solicitors for complainants was made out and served on Messrs. Atwood and Pease, solicitors for defendants as appears from said notice which is hereunto annexed.

I further certify that I have retained the depositions in my possession for the purpose of mailing the same to the court for which the same was taken.

I further certify that the Exhibits a portion of the same being returned herewith. and a portion of the same sent by express to the Court for which the testimony was taken.

And I do further certify that I am not of counsel for nor attorney for either of said parties nor in any wise interested in the event of the cause in said caption and depositions named.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of said Circuit Court, this 22nd day of October, in the year of our Lord one thousand nine hundred and two, and of the independence of the said United States of America the one hundred and twenty-seventh

JOHN A. SHIELDS,
Clerk U. S. Circuit Court, Southern District
(Seal) *of New York and Special Examiner.*

(Endorsed) Filed Oct. 24, 1902. Marshall E. Sampsell, Clerk.

216 IN THE CIRCUIT COURT OF THE UNITED STATES, Not

For the Northern District of Illinois—

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the Will of Robert G. Dun., deceased	In Equity. Notice for taking of Depositions.
vs.	
Lumbermen's Credit Association William C. Clancy and Burton W. Stadden	

To Messrs. Atwood and Pease, Defendant's Solicitors.
Gentlemen:

Please take notice that on the 23rd day of October 1902 at ten oclock A. M. before M J. Head Notary Public, or in case of his absence or inability to act, before some other competent officer duly authorized under the statutes so to act, at the office of said M. J. Head in the City of Tallapoosa, in the County of Haralson, and State of Georgia we shall take the depositions of the following witnesses who reside more than one hundred miles from the place of trial in the above entitled cause to-wit: E. Lovvorn, J. A. Head. and others, The examination of the said witnesses will continue from day to day until completed. The said depositions will be read in evidence on the part of the complainants on the trial of the said cause. You are invited to attend and cross examine if you so desire.

HOYNE, O'CONNER & HOYNE,
OFFIELD, TOWLE & LINTHICUM,
Solicitors for complainants.

Chicago, October 13th 1902.

Reed. a copy of the within notice is hereby acknowledged by the receipt of a copy thereof this 13th day of October, A. D. 1902.

ATWOOD & PEASE,
Solicitors for Defendants.

217 In the Circuit Court of the United States,

For the Northern District of Illinois—

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton, and Walter D. Buchanan, executors and trustees under the Will of Robert G. Dun, deceased	In Equity.
vs.	
Lumbermen's Credit Association, William Clancy and Burton W. Stadden	

At Tallapoosa in the county of Haralson and state of Georgia on this 23rd day of October, 1902, at 10 o'clock A. M of said day, before me, M. J. Head a notary public within and for Haralson County in the state of Georgia at office of M. J. Head personally appeared E. S. Ault, solicitor for complainants and Charles O. Loucks solicitors for defendants.

And thereupon the following proceedings were had pursuant to notice and the attendance of counsel.

E. Complainants called as a witness in their behalf E. LOVVORN who being first duly sworn by me, testified as follows:
E. LOVVON being sworn testified as follows:

Q Where do you reside and what business are you engaged in? A I reside in Tallapoosa, in the lumber business.

Q What business were you engaged in in Jany. 1902, and where was that business located? A I was in the lumber business, shipping from this point.

218 Do you get you—mail here? Do you do business as an individual or as a member of the firm? A Doing business as a member of the firm. Firm Lovvonn Bros.

Q How do you spell your name, Lovvorn? A Lovvorn.

Q Who composed the firm of Lovvorn Bros? A E. C. and E. Lovvorn.

Q What was the Post Office address of the firm? A Tallapoosa.

Q How long had the firm of Lovvorn Bros. been getting mail in Tallapoosa, prior to January 1902, and doing business? A Six years.

Q How long had you lived at and near to Tallapoosa, prior to January, 1902. A Ten years.

Q Was there any such firm as Loworn Bros. engaged in business in Tallapoosa since you have been living here.

(Counsel for defendant objects to the question as calling for a conclusion of the witness.)

A No.

Q Have you ever heard of any body by the name of Loworn in this section? A I have not.

Q Do you know of any body engaged in the lumber business or any other business whose name resembles that name, here or near here? Except your own? A No.

Q I believe you said you were in business ten years, Therefore you were in business in September 1901?

Cross-Examination by counsel for the defendant.

Q Have you ever received any mail in which your name was mispelt? A I have.

Q How was it mispelt? A It was spelt with an A instead of an O.

Q No other way? A I believe not.

Q Have you ever received letters where your name 219 was spelt Loworn. A. I believe not.

Q. You would not be positive you had not. A. I would not be positive.

Q. Is it not a fact that when two letter V's are run closely together, they resemble a w. A. Not in the way I make my letters.

Q. Is it not a fact that when two letter V's are run close together by the Typewriter they resemble a W. A. It would depend on the space.

Q. What do you mean by depend on the space. A. Between the two letters.

Q. When there is no space between two V's, do they not resemble the letter w. A. Yes sir.

Q. Can you think of any word in the English language where one letter V. immediately follows another letter V. A. I cannot.

Q. You stated in Direct Examination that you did not

E. know any one near here whose name resembles your own, do you know any one in any other place A. I knew a man by the name of Low, but he was not a member of a firm here.

Q. Have you ever seen your name mispelt in any form other than the case you have mentioned. A. I cannot say positive; I get mail sometimes in which the name is mispelt.

Q. Do you ever get checks and bills. A. Never had anything of that kind mispelt.

Re-direct Examination.

Q. If written regularly by the Typewritter in the ordinary way could your name, Lovvorn Bros. not be easily distinguished from the name of Loworn Bros. A. It could.

E. LOVVORN.

J. M. 220 COL. J. M. MCBRIDE being sworn testified as follows:

Q How long have you lived in Tallapoosa, Col? A Well I suppose about 13 or 14 years.

Q What business are you engaged in? A I am in the banking and law business.

Q How long have you been in the banking business? A Six years.

Q Have you ever known any such firm doing business here in the lumber business or any other business by the name of Loworn Bros? A No, sir.

Q You know the firm of Lovvorn Bros. in the lumber business? A Yes.

Q Do you know of any firm here in business whose name resembles the name of Loworn Bros. except the name of Lovvorn Bros. A I do not recollect any other.

Q Do you know of any person named Loworn in this section? A I do not.

Q Was there any such firm or person doing business in Jany. 1902 or any time prior to that in your knowledge? A No, sir.

Cross-Examination.

Q Can you think of any word in the English language where one letter V immediately follows another letter V? A No, sir.

Q How many times have you ever been to Lovvorn Bros. Lumber Yard? A Well I have been to their plaining yard two or three times during the last 12 or 15 months, perhaps. I passed there frequently when they were running.

Q You do not know whether Lovvorn Bros. have received any correspondence in which their name has been mispelt or whether they have received bills where their name has been mispelt and two V's have been made like W? A I do not.

221 Q Is it not a fact that when two V's are run closely together they resemble a W where it is made with a typewriter? A I should think that would depend on the form of the letter. I do not remember about seeing any.

Q Suppose one V is run over a little way? A Well, if the machine struck it as it did first, it would make the letter plainer. However, there is some resemblance between the two I think.

Re-Direct by Mr. Ault.

Q Col. when two V's are written regularly by the typewriter would it not be easily distinguished from the letter W? A I have not thought of it before, and without some care I think it might be taken at first glance for one about as quick as the other.

Q Is your bank the only bank in Tallapoosa doing business? A Yes, sir.

J. H. McBride.

MR. J. A. HEAD being sworn, testified as follows:

Q Where do you live, Mr. Head? A Right here in Tallapoosa.

Q How long have you been living here? A About 23 years.

Q What official position do you hold and how long have you held that position? A Assistant Post Master since June 7th, 1898.

Q Is it a part of your duty to assort and distribute mail running in Tallapoosa and leaving. Does your official duty as post master? A Yes, sir.

J. A. Q Does your official duty as Asst. Post-Master require
222 you to be familiar with names of persons and firms getting mail in Tallapoosa. A. Yes, sir.

Q You have been acting as Asst. Post Master for the past four years, including June, 1902. A Yes, sir.

Q Do you know any such firm as Loworn Bros.? A No.

Q Did any such firm as Loworn Bros. or any person named Loworn get mail in Tallapoosa in Jan. 1902 or at any time prior thereto or at any time since you have been connected with the Post Office here,.

(Counsel for defendant objects to the question because it calls for a conclusion of the witness and because it has not been shown that witness has personal knowledge of the matter inquired about.)

A Of course I cannot remember if any mail has ever come addressed to Loworn Bros. but no such firm has ever gotten mail here regularly.

Q Was there any such person or firm under the name of Loworn or Loworn Bros. in the lumber or any other business at or near Tallapoosa in Jan. 1902, or any other time before that you know of. A As a lumber firm regularly, no.

Q Do you know the firm of Lovvorn Bros. A Yes, sir.

Q Did they get mail in Tallapoosa in 1902 and prior to that time. A I suppose so, they get mail every day. they have been getting mail ever since they have been in business.

Q Have you ever heard of any such firm as Loworn Bros. A Never heard of any such firm as Loworn Bros. until I was asked by Mr. Head.

Q Could such a firm have been in business and gotten mail in Tallapoosa and you now know it?

(Counsel for defendant objected to the question because it calls for a conclusion of the witness.)

A No, sir.

223 Q Is there any other firm whose name resembles the name of Loworn Bros. except Lovvorn Bros. that you know of. A No, sir.

Cross-Examination.

Q Can you think of any name or word in the English language where one V immediately follows another V. A No, sir, I cannot at this time. it does in Lovvorn's name.

Q Do you think of any other except Lovvorn? A No, sir, I cannot just at this time. Deposit Head.

Q Is it not true that when two V's are run closely together they resemble a W? A If they were connected very closely together there might be.

Q You do not know whether Lovvorn Bros. received any mail do you in which their name is mispelt in any way? A I do not know as I did not take time to notice that part.

Re-idrect Examination.

Q If the word Lovvorn was written in an ordinary way could it not be easily distinguished from Loworn? A It would be easily distinguished.

JAS. A. HEAD.

224 United States of America, }
Northern District of Ga. } ss.

I. M. J. Head a notary public within and for Haralson County in the state of Georgia, do hereby certify that the reason for taking the foregoing depositions is, and the fact is that the testimony of the said witnesses is material and necessary for the complainants in the cause in the caption of the said depositions mentioned and that the said witnesses and each of them live and at the time of the taking of the said depositions did live at Tallapoosa in the county of Haralson and state of Georgia more than one hundred miles (100) from the city of Chicago, in the County of Cook and state of Illinois, where the court at which said cause is to be tried was appointed by law to be held. Certificate notary

I further certify that notification of the time and place of the taking of the said depositions made and signed by the solicitors for the complainants was duly served on the solicitors for the defendants, to be present at the taking of the said depositions and to put interrogatories to the said witnesses if they might think fit.

I further certify that on the 23rd day of October, 1902, I was attended at the place named in the said notification for the taking of the said deposition, by E. S. Ault, solicitors for the complainants and Charles O. Loucke, solicitor for the

defendants, and also by the witnesses E. Lovvorn, J. A. Head and J M. McBride who were of sound mind and lawful age; and the said witnesses were and each of them was by me carefully examined, cautioned and sworn to testify to the truth, the whole truth and nothing but the truth; that the said depositions were taken down in short hand by Berta Dougherty a stenographer and by her reduced to typewriting under my personal supervision; that after carefully
225 reading the same to the said witnesses they and each of them subscribed the same in my presence; that I retained the said depositions in my possession for the purpose of sealing and directing the same with this certificate of the reasons aforesaid for taking the said depositions with my own hand to the court for which the same was taken.

And I do further certify that I am not of counsel or attorney for either of the parties in the said depositions and caption named or in any way interested in the event of the said cause in the said caption named.

In Witness Whereof I have hereto set my hand and affixed my Notarial seal this 23rd day of Oct. in the year of our Lord one thousand nine hundred and two.

M. J. HEAD,
Notary Public.

(Seal)

(Endorsed) Received and Filed Oct. 25, 1902 Opened Oct. 25, 1902. M. E. Sampsell, Clerk.

226 DEPOSITIONS OF E. GILLMAN, JULIAN B. PARKE, ET AL.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois—

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton, and Walter D. Duchanan, Executors and trustees under the will of Robert G. Dun, deceased,	In Equity.
versus.	
Lumbermen's Credit Association, William Clancy and Burton W. Stadden,	

At Selma, in the County of Dallas and State of Alabama, on this the 22nd day of October, 1902, at 8 o'clock A. M. of said day, before me, Hugh Mallory, a notary public within and for Dallas county in the State of Alabama, at the offices of Pettue, Jeffries & Partridge, on Broad street, in said Selma, personally appeared L. E. Jeffries, solicitor for complainants, and Charles O. Loucks, solicitor for defendants.

And thereupon the following proceedings were had, pursuant to notice and the attendance of counsel.

Complainants called in the order named, as witnesses in their behalf, E. Gillman, Julian B. Parke, A. W. Cawton and Nathan Kahn, who being first duly sworn by me testified as follows:

227 MR. E. GILLMAN being first duly sworn, testified as follows: Deposition of E. Gillman.

Defendant objected to examination of witness on the ground that no notice was served on this defendant of the taking of the deposition of said witness.

W. What is your name? A. E. Gillman.

Q. Where do you reside? A Selma.

Q. How long have you resided there Mr. Gillman? A. about 37 years.

Q. What business are you in? A. In glass business—bakery.

Q. How long have you been in the business you have mentioned and what other business if any? A. For fifteen years—I have been in the bakery line for I guess about 24 or 25 years.

Q. At present do you do a retail or wholesale or both? A Wholesale and retail. Both.

Q How long have you been in the wholesale and retail business? A. As above stated.

Q. What number of inhabitants are there in Selma, as near as you can come at it A. I suppose 12 thousand.

Q. Do you mean inside the corporate limits or inside and out side the corporate limits? A. I reckon outside the corporate limits there would probably be 1500.

Q. Do you conduct your own business in the businesses you have spoken of? A. Yes Sir.

Q. Are you familiar with the various people in Selma that are in various businesses?

Counsel for defendants object to the question because it calls for a conclusion of the witness.

A. Yes sir.

Q. Are you familiar Mr. Gillman with the various persons in Selma that are engaged in the Lumber business? Or that are engaged in the planing mill business?

Same objection as above—Counsel of defendant objects to this question, because it calls for a conclusion of the witness?

A. Yes Sir.

Q. Mr. Gillman was there any such firm engaged in the planing mill business in Selma, Ala. in or about Jan. 1902, as Curtis & Payne?

228 Defendant's counsel objects to the question because it calls for a conclusion of the witness, and it is not shown that the witness has personal knowledge of the matter inquired about.

A. No Sir.

Q. On or about Jan. 1902, was there any such firm as Curtis & Payne engaged in any business in Selma, Ala., or vicinity?

Defendant's counsel objects to this question on the ground that it calls for a conclusion of the witness, and it is not shown that the witness had personal knowledge of the matter inquired about.

A. No Sir.

Q. Was there any firm known or called Curtis & Payne engaged in the planing mill business or any other business in 1901, in Selma Alabama, or vicinity?

Defendant's counsel objects to this question on the ground that it calls for a conclusion of the witness, and it is not shown that the witness has personal knowledge of the matter inquired about.

A. No Sir.

Q. Mr. Gillman, was there any such firm as Park & Stevens engaged in the Lumber business or any other business in Selma, Ala. or vicinity in January, 1900.

Defendant's counsel objects to the question because it calls for a conclusion of the witness and because it is not shown that the witness has any personal knowledge of the matter inquired about.

A Well there was a firm of Parke & Stephens, but the Parke was spelled Parke.

Q. Was there any such firm in Selma in 1900 engaged in the Lumber or any other business as P-a-r-k & Stevens?

Defendant's counsel objects to the question because it calls for a conclusion of the witness, and because it is not shown that the witness has personal knowledge of the matter inquired about.

A. No Sir.

Q. Has there been any such firm in Selma Ala or vicinity as Park & Stevens, engaged in the Lumber business or engaged in any other business at any time since January 1900, or at any time within one or two years prior to January 1900.

Defendant's counsel objects to the question because it calls for a conclusion of the witness and because it is not shown that the witness has any personal knowledge of the matter inquired about.

229 A. No Sir.

Q. You don't know any such firm—Do you know or have you ever known in Selma Alabama or vicinity any firm known and called Park & Stevens.

Defendants' counsel objects to this question because it calls for a conclusion of the witness, and because it is not shown that the witness has any personal knowledge of the matter inquired about.

A. No Sir.

Q. What is the correct name if you know, and the correct

of E. spelling, if you know of a firm in Selma, Ala. known and called Parke & Stevens?

Defendant's counsel objects to this question because it calls for a conclusion of the witness, and because it is not shown that the witness has personal knowledge of the matter inquired about.

A. They spell it Parke & Stephens I think—Thats correct.

Q. You are certain they spell it Parke, the Parke? A. Yes Sir.

Q. You at first answered that the Stevens was Stevens and afterwards changed it and said it was spelled Stephens —What is the correct way of spelling it, Mr. Gillman?

Counsel for defendant objects to the question because it is leading, and because the question has been fully answered.

A. It should have been as first stated—Stevens.

Q. You were mistaken then when you stated it was Stephens

Counsel for defendant object to the question because it is leading.

A. Yes Sir.

Cross examination by counsel for defendants.

Q. Are there several suburbs tributary to the city of Selma? A. What do you mean by suburbs?

Q. Are there several smaller places in and around Selma? A. Do you mean small towns?

Q. No, you understand what a suburb is, do you not? A. I suppose to a city it means small villages.

Q. Well, are there any smaller villages in the immediate vicinity of Selma? A. Within 5 or six miles yes sir.

230 Q. What are the names of some of them? And how many people are there in each one? A. Well I couldn't give you the population of them—

Q. What are the names of them? A. Within five or six miles—I will have to qualify the five or six miles and make it within ten miles—it would be Burnsville, Summerfield, I don't believe there are any others around.

Q. Do you know all the people living in each of these places? A. I know a great many of them.

Q. Do you know all of them? A. I do not.

Q. Is there a line of railroad running through each of these places? A. There is through Burnsville.

Q. Is there through the other place? A. No Sir.

Q. Where do the people in Summerfield go to catch the train?

Q. Selma.

Q. For how many miles around do the people come to Selma to catch the train? A. I should say 10 or 15 miles.

Q. Are you acquainted with everyone of the residents within a radius of 15 miles of Selma? A. No Sir.

Q. About how many people are there within a radius of 15 miles of Selma? A. I should think about 20000 or 25000.

Q. Does that include the colored population? A. Yes.

Q. Have you been engaged in any other business except those you have mentioned during the past five years? A. No Sir.

Q. Have you been in any other form of business than those you have mentioned during the past ten years? A. No Sir, I have not.

Q. Why are you so sure about the spelling of the name Parke Have you recently investigated to ascertain how it is spelled? A. I have had an acquaintance of the name of Parke for the last thirty years.

Q. Do you know whether he has changed the spelling of his name recently. Have you looked it up to see? A No Sir I have not.

Q. Have you investigated to see whether there is a firm in this city by the name of Curtis & Payne? A. I have never heard of such a firm I believe.

231 Defendant's counsel moves to strike the answer as not responsive.

Q. Will you please answer the question? A. The question was—

Q. Have you investigated to see whether there is a firm in this city by the name of Curtis & Payne? A. I have inquired. And I have never heard of such a firm.

Q. How did you happen to inquire? A. I really don't know how to answer that question.

Mr. Mallory: Mr. Gillman, you should try to give an answer if possible, the commissioner would suggest to you.

Q. Can't you give a better answer than that to the question? A. As to why I inquired?

Q. Yes Sir. A. I really don't know how to answer that question.

of E. Q. Did anyone tell you to inquire, or did you inquire of your own volition? A. I would like to be excused from making further answer to this, and make further inquiry.

Q. Make further inquiry of what? A. Of this entire matter.

Q. Of the entire matter concerning which you have testified? A. Concerning the firm of Curtis & Payne.

Re Direct Examination by Plaintiff's Counsel.

Q. Hasn't your inquiry about this matter been made at the instance and request of Pettus Jeffries & Partridge? A. Yes Sir.

Q. They are the attorneys for R. G. Dun & Co. are they not. A. Yes Sir.

Q. And as attorneys for R. G. Dun & Co. they asked you to make inquiry of this matter, did they not? A. Yes Sir.

Q. Did you do so? A. Yes Sir.

Q. And what you have testified about is the result of your investigation and your knowledge on this subject, it is not? A. Yes Sir.

Q. You spoke of Summerfield as being a suburb of
232 Selma—How far is Summerfield from Selma, as near as you can come at it? A. About ten miles.

Q. You spoke of Burnsville as being a suburb of Selma. How far is Burnsville from Selma? A. About 10 miles.

Q. Are you acquainted with the business men, or those people that are engaged in business in Burnsville, and are you acquainted with those people engaged in business in Summerfield? A. Yes Sir.

Q. Is there any firm engaged in the planing mill business or in any other business in Summerfield or at Burnsville now, or in 1902, at any time, and in 1901 at any time known and called Curtis & Payne, or known and called Park & Stevens? A. No Sir.

Q. Mr. Gillman, you have answered that in a radius of 15 miles of Selma, there are 20000 or 25000 inhabitants—what proportion of that 20000 or 25000 are negroes, and what proportion are whites as near as you can come at it? A. I suppose about 1/4 white and 3/4 colored.

Q. Are the negroes in that radius engaged any of them that you know of in the planing mill business? A. No Sir.

Q. Is not the vicinity of 15 miles of Selma, an agricultural vicinity, only.

Defendant's counsel objects to the question because it calls for a conclusion of the witness, not being shown that witness has a personal knowledge, and because it is leading. Depos Gill

Q. Yes Sir.
Q. Do you know Mr. Julian B. Parke? A. I do.
Q. How long have you known him? A. About 25 years.
Q. Is he the Parke of Parke & Stevens? A. Yes Sir.
Q. Has he always spelt his name Parke or not?

Defendant's counsel objects because question is leading—calls for a conclusion of a witness, because it is not shown that the witness has personal knowledge of the matter inquired about, and because it is not redirect examination.

Re Cross Examination by Defendant's Counsel.

Q. When were you last at Summerfield? A. About three years ago.

233 Q. When were you last at Burnsville? A. About a year.

E. GILLMAN.

234 Mr. JULIAN B. PARKE, being sworn on behalf of Plaintiff, testified as follows: Depos Jul

Q. What is your name? A. Julian B. Parke—Some people whose name is Julian spell it Julien. I spell my name, Julian.

Q. Mr. Parke, How do you spell Parke? A. Parke.

Q. Have you always spelt it that way? A. Yes Sir:

Q. In what business are you engaged? A. In the sash, door and blind Mfg business.

Q. Under what firm name do you conduct that business? A. Parke & Stevens.

Q. Who compose that firm, and give their names? A. Julian B. Parke and Frank W. Stevens.

Q. Were you so engaged under this firm name in 1900, 1901 and 1902? A. Yes Sir, certainly.

Q. During those years, how is the firm name of Parke & Stevens spelt. A. Parke & Stevens.

of Parke.

Q. How long have you lived in Selma? A. Since 1862.
Q. What is your age? A. I am forty years old.
Q. How long have you been in business in Selma?
Q. From Oct. 1884 to 1894 I was in the Hardware Business. under the firm name of Johnson, Parke & Co. From Feb. 1895, until now, I conducted the Selma Sash Door and Blind factory under the firm name of Parke & Stevens.
Q. Are you familiar with the persons in Selma and civinity engaged in the sash and blind business, or engaged in the planing mill business?

Defendant's counsel objects to the question on the ground that it calls for a conclusion of the witness, because it is not shown that the witness has personal knowledge of the matter inquired about.

A. Yes Sir.
Q. During the year 1900, 1901, 1902, was there any firm in Selma or vicinity engaged in the planing mill business? Or engaged in the sash door and blind business, or en-
235 gaged in any business, under the firm name and style of Park & Stevens? A. No Sir.
Q. At any time shortly prior to 1900, within a year or two years was there any firm in Selma or Vicinity engaged in the planing mill business, Sash door and blind business or any other business known and called Park & Stevens.

Counsel for defendant objects to this question because it calls for a conclusion of the witness, because it is not shown that the witness has personal knowledge of the matter inquired about.

A. No Sir.
Q. Mr. Parke, in January 1902, was there any firm in Selma Alabama or vicinity engaged in the planing mill business by the firm name and style of Curtis & Payne.

Counsel for defendant objects to this question because it calls for a conclusion of the witness because it is not shown that the witness has personal knowledge of the matter inquired about.

A. No Sir.
Q. At that time, January 1902, was there any firm in Selma Alabama, or vicinity by the firm name and style of Curtis & Payne, engaged in any business?

Defendant's counsel objects to this question because it calls for a conclusion of the witness, because it is not shown that witness has personal knowledge of the matter inquired about.

A. I never heard of any.
Q. Have you made inquiry? A. I have not sir.
Q. In 1901, was there any firm in Selma or vicinity engaged in the planing mill business by the name of Curtis & Payne?

Defendant's counsel objects to this question because it calls for a conclusion of the witnes, because it is not shown that the witness has personal knowledge of the matter inquired about.

A. No Sir.
Q. During the year 1902 has there been any firm in Selma Alabama, or vicinity in the planing mill business sash door and blind business or any other business trading under the firm name of Park & Stevens or trading under the firm name of Curtis & Payne.

236 Defendant's counsel objects to this question because it calls for a conclusion of the witness because it is not shown that the witness has personal knowledge of the matter inquired about.

A. No Sir.
Q. What is the population of Selma? A. Anywhere from ten to fifteen thousand, variously estimated.
Q. That includes Selma and outside of corporate limits?

Defendants objects to this question on the ground that it is leading.

Q. When you say ten to fifteen thousand, what territory do you include? A. I include the mills which is the suburb of the city.
Q. What proportion of the population is white, and what proportion if black. A. I should say half—I reckon 50% white, I would suppose.
Q. What in your opinion is the population of Selma, within the vicinity of within 15 mile radius of Selma, as near as you can come? A. About 25000 people, I would suppose.
Q. What is the ratio of white and what is the ratio of negroes in that territory? A. I would say 1/4 of them were white.

Cross Examination by Defendant's Counsel.

Q. When you speak of the population, do you mean the voters? A. No Sir.
Q. You saind that the name of Julian was spelled two

arke. ways? A. No Sir I did not. I said I spelt my name Julian and that Julien Smith spelt his Julien.

Q. Do you know whether there are two ways of spelling the name Parke. Yes Sir several.

Q. What are the various ways of spelling it? A. Park is the name of a schoolteacher in Tuskegee Ala.

Q. Have you ever received letters in which your name was misspelled? A. Yes Sir.

Q. Frequently? A. No Sir, not frequently.

Q. Have you ever received letters in which your name was spelt Park

237 Q. Letters sometimes come addressed to Parke & Stevens Park.

Q. Have you ever received bills made out to the firm of Park & Stevens? A NO Sir.

Q. When were you at Summerfield, last? A. About eighteen years ago.

Q. When were you at Burnsville last? A. I have only passed through Burnsville, I don't know that I was ever there.

Q. Are you acquainted with all the persons in a radius of 15 miles of Selma? A. No Sir.

Q. About how many people are there within that radius you are not acquainted with? A. A few—I have been living here about forty years, and know nearly everybody.

Q. How far is Summerfield from Selma? A. 10 miles on the dirt road.

Q. How far is Burnsville? A. 10 miles on the R. R.

Q. Do you travel much in the surrounding country, or attend strictly to your own business? A I move around some.

Q. What do you mean by "move around some?" A. Go whenever my inclinations call. I have a horse and buggy and generally go when I feel like it.

Re-direct Examination by Plaintiff's Counsel.

Q. Mr. Parke, are you familiar with the people that are engaged in business at Summerfield and business?

Defendant's counsel objects because it calls for a conclusion of the witness, because it is not shown that the witness has personal knowledge of the matter inquired about.

A. I couldn't say that I was familiar. I think that I know them.

Q. Is there any firm engaged in any business in Summerfield or Burnsville, now, or was there any such firm in 1901, and 1900, trading under the firm name and style of Park & Stevens?

Defendant's counsel objects on the ground that it calls for a conclusion of the witness, because it is not shown that the witness has personal knowledge of the matter inquired about.

238 A. No sir.

Q. Is there any firm at Burnsville or Summerfield now or has there been any such firm in 1900, 1901 and 1902, known and called Curtis & Payne, and engaged in the planing mill business?

Defendant's counsel objected to the question because it calls for a conclusion of the witness because it is not shown that the witness has personal knowledge of the matter inquired about.

A. No Sir.

Q. You testified that you had received sometimes letter addressed to Park & Stevens. Was this the correct address or not? A. No Sir.

Q. What is the correct address? A. Parke & Stevens.

JULIAN B. PARKE.

239 DR. A. W. CAWTHON, being sworn on behalf of plaintiff, testified:

Direct Examination.

Defendant's counsel objects to the taking of the deposition of the witness, because no notice has been served upon solicitors for defendants in this case of the taking of the testimony of this witness.

Q. Dr. What is your full name? A. Alexander Washington Cawthon.

Q. Where do you reside and how long have you so resided? A Selma, Dallas Co. Alabama, since 1864.

Q. What business are you now engaged in and what businesses have you been engaged in since you have been in Selma? A Drug Business.

Q Under what name and style? A. First under the firm

A. name of McVoy and Cawthon, then Cawthon and Coleman, and Now Cawthon Coleman Company.

Q. What is the nature of your business—wholesale, retail or both? A. Wholesale and retail.

Q. Have you done in the last 15 years a large or small business in the business you have been engaged in? A. I suppose you would call it large, considering the size of the place.

Q. Now and for the past 15 years, did your business extend to a radius of twenty-five miles around the city of Selma and in the City of Selma.

Defendant's counsel objects to the question because it is leading.

A. Yes Sir.

Q. Dr. are you familiar with the business men and people in and around the City of Selma?

Defendant's counsel objects to the question because it calls for a conclusion of the witness, because it is not shown that the witness has personal knowledge of the matter inquired about.

A. I am.

Q. Do you know Mr. Julian B. Parke? A. Yes Sir.

240 How does he spell the Parke to his name? A. Parke, I think.

Q. Has he always spelt it that way? A. Yes Sir.

Q. What business is he engaged in, and under what firm name and style? A. In the manufacture of sash doors and blinds and dressing lumber, and under the firm name of Parke & Stevens.

Q. Dr. Is there any such firm in Selma, Ala. or vicinity in any business, trading and doing business under the firm name and style of Park & Stevens? A. Not that I know of.

Q. Is there any such firm in Selma or vicinity in the planing mill business as Curtis & Payne.

Defendant objects to the question by his counsel because it calls for a conclusion of the witness, because it is not shown that witness has personal knowledge of the matter inquired about.

A. A. No sir.

Q. Has there been any such firm in Selma or vicinity in the years 1900, 1901 and 1902?

Defendant's counsel objects to this question because it calls for a conclusion of the witness because it is not

shown that witness has personal knowledge of the matter inquired about. Def'ts W.

A. No Sir.

Q. Dr. Has there been in Selma or vicinity in the year 1902 1901 and 1900, any firm in any business trading and doing business under the firm name and style of Park & Stevens? A. No Sir.

Q. What is the population of Selma and immediate suburbs? A. I should say about 13000.

Q What is the ratio of negroes to whites in that population A. Well the negroes are in the majority—I suppose about 7 to 6.

Q. What is the population of Selma, together with a vicinity of say 15 miles around Selma, as near as you can come at it? A. I suppose it would be probably 16000 or 18000.

Q. What is the ratio of whites to blacks in that radius?

A. I suppose about three to one.

240½ Q Are you familiar with the persons engaged in business within a radius of 15 or 20 miles around Selma? A I know them in a commercial way, I am not personally acquainted with them. I know quite a number of them personally, and have accounts with a great many that I don't know personally.

A. W. Cawthon.

241 NATHAN KAHN, being sworn for plaintiff, testified as follows: Def't N.

Defendant objects to the taking of the deposition of this witness on the ground that no notice was served on this defendant of the taking of the deposition of said witness.

Q. What is your name? Where do you reside? and how long have you so resided—what is your business, and how long have you been so engaged? A. Nathan Kahn, Selma, thirty seven years, wholesale grocer for eight years, about.

Q. Prior to the time you commenced the wholesale grocery business, in what business were you engaged, and how long were you so engaged and where? A. Wholesale and retail drygoods, about twenty five years, at Selma, Alabama.

Q. Mr. Kahn, how many inhabitants in city of Selma and immediate suburbs? A. About 15000.

of Kahn.

Q. How many inhabitants in City of Selma, and territory of 15 or 20 miles adjacent to Selma. A. I suppose about 25000.

Q. In this radius what is the proportion of negroes to whites? A. About 2/3 negroes.

Q. Are you familiar with the people or persons engaged in business in Selma and immediate suburbs?

Defendant's counsel objects to this question on the ground that it calls for a conclusion of the witness, because it is not shown that the witness has personal knowledge of the matter inquired about.

A. Yes sir.

Q. Are you familiar with the people and persons engaged in business within a radius of fifteen miles around Selma?

Defendant objects to this question on the ground that it calls for a conclusion of the witness because it is not shown that the witness has personal knowledge of the matter inquired about.

A. Pretty well, yes sir.

Q. Have you been thus familiar with the people and persons doing business in Selma and vicinity within 15 or 20 miles around Selma, for the past five years?

Defendant's counsel objects to this question on the ground that it calls for the conclusion of the witness and on the further ground that it is not shown that the witness has personal knowledge of the matters inquired about.

242 A. Yes sir, I have.

Q. During that time, at any time, has there been any firm engaged in the planing mill business or any other business, under the firm name and style of Curtis & Payne, or Park & Stevens, in Selma or vicinity?

Defendant's counsel objects to the foregoing question on the ground that it calls for a conclusion of the witness, because it is not shown that the witness has personal knowledge of the matter inquired of.

A. I never heard of such a firm as Curtis & Payne, and I have heard of a firm by the name of Parke & Stevens, but there is no such firm as Park & Stevens.

Q. Is there now, and has there been in 1901, or at any time in 1902 any firm in any business in Selma, or its vicinity, doing business under the firm name and style of Curtis & Payne?

Defendant's counsel objects to this question on the

ground that it calls for a conclusion of the witness, because it is not shown that the witness has personal knowledge of the matter inquired of.

A. No Sir.

Q. Is there now, or has there been in the year 1900, 1901 or 1902, at any time, any firm in Selma or its vicinity, in any business, trading and doing business under the firm name and style of Park & Stevens?

Defendant's counsel objects to this question because it calls for a conclusion of the witness, because it is not shown that witness has personal knowledge of the matter inquired about.

A. No Sir.

Cross-Examination.

Q. When were you last at Summerfield? A. Never been there in my life.

Q How far is Summerfield from Selma? A About 8 or 10 miles.

Q Do you know whether the people from Summerfield come to Selma to catch the train? A. Yes, sir.

243 Q. When were you last at Burnsville? A. It has been a good many years. I passed through about two months ago.

Q. You go out into the country within fifteen miles very frequently? A. No Sir.

Q. How many competitors have you in your line of business. A. Here in Selma.

Q. Yes Sir. A. About eight.

Q. Have you investigated to see whether you could learn to whether there was a firm by the name of Curtis & Payne? A. No I haven't specially investigated it.

Q. Is the business which you have mentioned the only business in which you have been engaged in the last five years? A. Yes Sir.

Re-direct Examination.

Q. Are you familiar with the people and persons engaged in business at Summerfield and Burnsville?

Defendant's counsel objects to this question on the ground that it calls for a conclusion of the witness, because it is not shown that the witness has personal knowledge of the matter inquired about; also because it is leading.

A. Yes Sir.

Q. Is there now, as has there been in the year 1902, 1901 or 1900, any firms or firm engaged in any business, either at Burnsville, or at Summerfield, trading and doing business under the firm name of either Curtis & Payne, or Park & Stevens?

Defendant's counsel objects to this question because it calls for a conclusion of the witness, because it is not shown that the witness has personal knowledge of the matter inquired about.

A. No Sir.

NATHAN KAHN
Selma Ala Oct 22 1902.

To Hugh Mallory, Esq.,

Inasmuch as you have furnished me with carbon copies of the depositions of E. Gillman, Julian Parke, Dr. A. W. Cawthon, and Nathan Kahn, in the case of Dun et al vs. Lumbermen's Credit Association et al, without correcting typographical errors I hereby authorize you to correct any errors, merely typographical, in said depositions, and do waive any typographical error thereon.

CHAS O LOUCKS
Solr for Lumbermens Credit Assn

244 IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois—

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and trustees under the will of Robert G. Dun, deceased,	In Equity.
vs.	Notice for taking of Depositions.
Lumbermen's Credit Association, William C. Clancy and Burton W. Stadden,	

To Messrs. Atwood & Pease,
Defendants' Solicitors.

Gentlemen:—

Please take notice than on the 21st day of October, 1902, at ten o'clock A. M. before Daniel Partridge, a Notary Public, or in case of his absence or inability to act, before some other

competent officer duly authorized under the statutes so to act, Notice.
at the office of Pettus, Jeffries & Partridge, in the City of Selma in the County of Dallas and State of Alabama we shall take the depositions of the following witnesses who reside more than one hundred miles from the place of trial in the above entitled cause to-wit: Julian B. Parke, C. W. Hooper, and others. The examination of the said witnesses will continue from day to day until completed. The said depositions will be read in evidence on the part of the complainants on the trial of the said cause. You are invited to attend and cross examine if you so desire.

HOYNE, O'CONNOR & HOYNE,
OFFIELD, TOWLE & LINTHICUM,
Solicitors for Complainants.

Dated, Chicago, October 13th, 1902.

Recd. copy of the within notice is hereby acknowledged by the receipt of a copy thereof this 13th day of October, A. D. 1902.

ATWOOD & PEASE,
Solicitors for Defendants.

245 United States of America, }
Middle District of Alabama, } ss.

I, Hugh Mallory, a Notary Public within and for the County Certificate of Dallas, in the State of Alabama, do hereby certify that the reason for taking the foregoing depositions, and the fact is that the testimony of said witnesses is material and necessary for the complainants in the cause in the caption of the said depositions mentioned, and that the said witnesses and each of them live, and at the time of the taking of the said depositions did live at Selma, in the County of Dallas, in the State of Alabama, more than one hundred (100) miles from the city of Chicago, in the County of Cook, in the state of Illinois, where the Court at which said cause is to be tried was appointed by law to be held.

I further certify that notification of the time and place of the taking of said depositions, made and signed by the Solicitors for the complainants, and hereto attached, was duly served on the solicitors for the defendants, to be present at the taking of said depositions, and to put interrogatories to the said witnesses if they might think fit.

I further certify that on the 22nd day of October, A. D. 1902 I was attended at the place named in the said notification for the taking of the said depositions by L. E. Jeffries,

solicitor for the complainants, and Charles O. Loucks, solicitor for the defendants, and also by the witnesses, E. Gillman, Julian B. Parke, A. W. Cawthon and Nathan Kahn, who were of sound mind and lawful age; and the said witnesses were, and each of them was by me carefully examined, cautioned and sworn to testify the truth the whole truth
246 and nothing but the truth; that the said depositions were reduced to type-writing by Paul W. Peavy, a stenographer, in the presence of the witnesses, and under my personal supervision; that after carefully reading the same to the said witnesses, they and each of them subscribed the same in my presence; that I retained the said depositions in my possession for the purpose of sealing and directing the same with this certificate of the reasons aforesaid for taking the said depositions with my own hand to the Court for which the same were taken.

And I do further certify that I am not of counsel or attorney for either of the parties in the said depositions and caption named, or in any way interested in the event of the said cause in the said caption named.

And I do further certify that all corrections in said depositions, save the corrections of typographical errors, were made at the request of said witnesses and each of them before each signed his deposition, and in order to make the said depositions state correctly what the said witnesses deposed to; that the corrections of typographical errors was made under an agreement of counsel, signed by Charles O. Loucks, Esquire, solicitor for defendants, dated the 22nd day of October, 1902, and hereto attached.

In Witness whereof, I have hereunto set my hand and affixed my seal notarial, this the 25th day of October, A. D. 1902.

HUGH MALLORY,
(Seal) *Notary Public in and for Dallas County, Alabama.*

I, the above named Notary Public, do hereby certify that each of said witnesses, E. Gillman, Julian B. Parke, A. W. Cawthon, and Nathan Kahn, attended the taking of said depositions one day; that my fee for taking said depositions is $15.00

HUGH MALLORY,
(Seal) *Notary Public.*

(Endorsed) Received and Filed Oct. 27, 1902, Opened at request of Complt's Solr. Marshall E. Sampsell, Clerk.

247 IN THE CIRCUIT COURT OF THE UNITED STATES, Notice.

For the Northern District of Illinois—

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton, and Walter D. Buchanan, Executors and Trustees under the Will of Robert G. Dun, deceased

vs.

Lumbermen's Credit Association, William C. Clancy and Burton W. Stadden,

In Equity.
Notice for taking of Depositions.

To Messrs. Atwood & Pease,
Defendants' Solicitors.

Gentlemen:

Please take notice that on the 25th day of October, 1902, at ten o'clock A. M. before Miss J. A. Means, Notary Public or in case of her absence or inability to act, before some other competent officer duly authorized under the statutes so to act, at the office of Cassidy & Richardson No. 518 Fourth Avenue, street in the city of Pittsburgh in the County of Allegheny and state of Pennsylvania we shall take the depositions of the following witnesses who reside more than one hundred miles from the place of trial in the above entitled cause, to-wit: Walter D. Brown, William H. Radcliffe, Robert L. Dudley, A. B. Wigley and others. The examination of the said witnesses will continue from day to day until completed. The said depositions will be read in evidence on the part of the complainants on the trial of the said cause. You are invited to attend and cross examine if you so desire.

HOYNE, O'CONNOR & HOYNE,
OFFIELD, TOWLE & LINTHICUM,
Solicitors for complainants.

Chicago, October 14th, 1902.

Received copy of the above notice this 15th day of October, 1902.

ATWOOD & PEASE,
Solicitors for Defendants.

248 IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois—

Northern Division.

Mary B. Dun, Robert Dun Douglass Francis L. Minton, and Walter D. Buchanan Executors and Trustees under the Will of Robert G. Dun, deceased,	In Equity.
vs.	
Lumbermen's Credit Association, William Clancy and Burton W. Stadden	

At the city of Pittsburgh in the County of Allegheny and State of Pennsylvania, U. S. A. on this 27th day of October, 1902, at 10 o'clock A. M. of said day, before me, Leander Trautman a Notary Public within and for said county, in the State of Pennsylvania, at offices of Cassidy & Richardson, No. 518 4th Avenue City of Pittsburgh, Pa. personally appeared Chas O. Loucks Esq., Chicago, Ills of solicitors for defendants and O. S. Richardson, Esq., of Pittsburgh, Pa., of solicitor for complainants.

And thereupon the following proceedings were had pursuant to notice and the attendance of counsel.

DEPOSITIONS OF SUNDRY WITNESSES.

Taken pursuant to the annexed notice. Present Mr. Charles O. Loucks, Esq., of the Chicago Bar on behalf of the defendants and O. S. Richardson, Esq., of the Allegheny County Bar on behalf of the plaintiffs.

Owing to the inability and sickness of J. A. Means, the Notary Public named in the notice to take the testimony, it is agreed that the same shall be taken by Leander Trautman, Esq., Notary Public with the same force and effect as though his name had been in the original notice.

249 MR. ROBERT L. DUDLEY, a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct Examination by Mr. Richardson.

Q. What is your residence? A 312 Hill Avenue, Wilkinsburg, in the City of Pittsburgh, Pa.

Q What is your age? A Sixty-three years.
Q And your business for the last few years is what? A Publishing the Pittsburgh city directory.
Q State whether or not your occupation and business for, say four or five years last past has been the canvassing for and the publishing of the city directory of Pittsburgh and Allegheny? A Yes, sir, it has been.
Q In that business have you had ample opportunity to know the people who are in the various lines of business in the cities of Pittsburgh and Allegheny?
Objected to as calling for a conclusion of the witness.
A I have.
Q Do you know the individuals and firms in the cities of Pittsburgh and Allegheny connected with the lumber business?
Objected to as calling for a conclusion of the witness.
A I would know firms, and when I know of a firm I would not bother with the individuals, but an individual man in the lumber business I would know of the individual.
Q Do you know whether at or about last January of this year there was a man in the lumber business or connected therewith by the name of W. E. Brown? A I do not know of a name of that kind.
Q Or for, say three or four years prior to last January did you know of any such name connected with the lumber business? A. No, not W. E. Brown.
Q Or did the directory of Pittsburgh and Allegheny for three or four years prior to last January show the name of W. E. Brown?
Objected to as calling for secondary evidence.
250 A No, it did not.
Q Or did your directory for last year, 1901, show the name of W. E. Brown?
Objected to as calling for secondary evidence.
A No, sir.
Q As connected with the lumber business? A No, sir.
Q. Do you know this of your own knowledge? A Yes, sir.
Q I hand you a copy of your directory of Pittsburgh and Allegheny for the year 1901, and ask you if you collected the information for that book? A I collected a great deal of it personally, and a great deal of it I did not collect myself; I have to do that through the canvassers, but everything goes under my supervision as the names come in. There is not a

name in the book that I do not examine as fast as they are brought in by the men, so that in that light it is a personal canvass.

Q You might say on turning to the proper page for the name of Brown, with the initial "W", whether or not the name of W. E. Brown appears in that book? A No, it does not appear.

Q Does it appear in any connection whether in the lumber business or not? A No, sir.

Counsel for plaintiff offers page of the directory referred to, No. 275, marked Exhibit A, in evidence.

Q This is a page of the directory published by you, is it? A Yes, sir.

Q You may state whether or not you were acquainted with a concern in the lumber business formerly known as the Phillips & Mittensway Saw Mill and Lumber Company? A I was acquainted with the firm.

Q. Was this firm or concern in business in January last?

Objected to as calling for a conclusion of the witness, and because it has not been shown that the witness has personal knowledge of the matter inquired about.

251 Page from Pittsburgh Directory referred to by Witness, Robt. L. Dudley in his testimony Oct. 27/1902.

LEANDER TRAUTMAN
Notary Public

C. A. FOSTER,
CARNEGIE, PA.

WHOLESALE
FOSTER'S Celebrated Golden Mist Flour,
Is pronounced the best family flour on the market.
Not the Cheapest, but the Best.

Exhib
from
Dir

BROWN
" Thomas G clk 1417 Federal A
" Thomas H secy Willet Glass and Decorating Co 723 Liberty av h Wilkinsburg Pa
" Thomas J lab 1261½ Brownsville av
" Thomas J lab 906 Watson
" Thomas K 6812 Frankstown av
" Thomas L secy W M Co h 1221 Esplanade A
" Thomas M agt 69 9th h 263 Bouquet
" Thomas M atty 433 5th av rm 201 h 5301 Liberty av
" Thomas M ticket examiner Gas av n Stokes av A
" Thomas M plasterer 2339 Randolph A
" Thomas O clk 421 Wood rm 306 h 6315 Marchand
" Rev Thomas S Old Franklin rd n Perrysville av A
" Thomas S of Brown & Stewart 506 Diamond h 253 Dithridge
" Thomas W lab 5181 Dauphin
" Thomas W mach Kincaid n N Fairmount av
" Turner waiter 94 Elm
" Valentine driver 4548 Penn av
" Valentine A baker 3811 Foster
" W B waiter 923 Wylie av
" W D of Pgh Pattern Co 3200 Penn av h 119 Sweetbriar
" W D treas Rib River Lumber Co 545 Liberty av h 5702 Callowhill
" W E brklayer 427 Taylor
" W H atty 411 Grant
" W H clk 1022 Brown A
" W H signwriter 501 Federal A
" W H & Co steel rollers 30 Schmidt bldg W H, C A and J P Brown
" W H & Sons coal Bell Phone Court 646-2 25 Conestoga bldg
" W Harry coal and coke Bell Phone Court 3131 25 Conestoga bldg h 6742 5th av Bell Phone East 606
" W J carp 3220 Bouquet
" W Kennedy mangr real est dept S D & T Co h Sewickley Pa
" W M clk 520 Wood h Braddock Pa
" W N clk 5966 Baum h 326 Shetland
" W R supt 3046 Penn av h 215 S Fairmount av
" W S firearms and sporting goods Bell Phone Grant 241 520 Wood h Braddock Pa
" Walter clk 306 North av W A
" Walter driver 1401 Veto A
" Walter lab Allequippa n Soho
" Walter lab 115 Pike
" Walter riverman 1614 Wylie av
" Walter B clk 121 McCandless av
" Walter B janitor 154 Clark
" Walter D stenog Burgess and Maple av A
" Walter H salesman 515 Overhill
" Walter M teller Pgh Dk for Savings h 99 Climax
" Walter P clk 51 Water h 121 McCandless av
" Walter R bkkpr 512 Smithfield h Wilkinsburg Pa
" Ward B artist 553 Grant h Knoxville Pa
" Washington grocer 3029 Smallman h same
" Willard hostler 3 Somerset A
" Willard W dispr 3 Somerset A
" Wm 712 Taylor av A
" Wm Shady av n Hastings
" Wm barber 7229 Finance
" Wm barber 3029 Penn av
" Wm bridgeman 1237 Lake A
" Wm butler 635 Ridge av A
" Wm carp Moorewood av n Davis av A
" Wm clk 2807 Berthoud
" Wm coachman Shady av n 5th av

BROWN
" Wm driver 5159 Jordan ay
" Wm fireman 4 Spring ay
" Wm gasfitter 610 Wylie av
" Wm ironwkr 32 Ashton A
" Wm janitor 2 Perry
" Wm lab 923 Carpenter av A
" Wm lab 74 Van Braam
" Wm lab 2127 Arch
" Wm lab 80 Elm
" Wm lab 1424 Junia's A
" Wm lab 2 Humber ay
" Wm lab 4 Humber ay
" Wm lab 7 Carthage
" Wm lab 3212 Mulberry ay
" Wm lab 3045 Smallman
" Wm lab 2802 Jane
" Wm lab 14 Carpenter ay
" Wm mattressmkr 1508 Webster av
" Wm millwkr 1207 Locust
" Wm millwkr 26 S 22d
" Wm packer 1629 Ann
" Wm patternmkr 113 Erie W A
" Wm patternmkr 1308 Race A
" Wm patternmkr 1434 Sheffield A
" Wm patternmkr 119 Sweetbriar
" Wm porter 1629 Ann
" Wm porter 2 Perry
" Wm salesman 1840 Enoch
" Wm shoes 901 Herron av h same
" Wm waiter 923 Wylie av
" Wm waiter 1520 Wylie av
" Wm A lab 2928 Smallman
" Wm A plumber Virginia n Daisy av A
" Wm A C of Howard Brown & Bro 439 4th av h 239 S Fairmount av
" Wm C carp 87 Roberts
" Wm C clk 204 Tradesmens bldg h Oakmont Pa
" Wm C ironwkr 1617 Penn av
" Wm C marble 4715 Butler h Oakmont Pa
" Wm D clk 7049 Hamilton av
" Wm E brklayer 1530 Bedford av
" Wm E lab 7722 Abbott
" Wm E lab 901 57th
" Wm F brklayer rr 1332 Gibbon
" Wm F electr 57 California
" Wm F lab 4706 Hatfield
" Wm F teamstr 362 Soho
" Wm G stenog 56 Greenbush
" Wm H 2168 2d A
" Wm H agt 2654 Norwood av A
" Wm H boat repairer Browns Station 2d av
" Wm H brkman 674 Lytle
" Wm H clk 245 4th av h 4521 Center av
" Wm H clk 415 Carnegie bldg h 222 Meyran
" Wm H clk P O h Knoxville Pa
" Wm H engineer 79 Sweetbriar
" Wm H gas fitter 832 Adelaide
" Wm H lab 6064 Butler
" Wm H lab 2833 Berthoud
" Wm H lab 4 Blackadore
" Wm H lab 353 Fisk
" Wm H lab 80 Melrose av A
" Wm H lab 222 Meyran
" Wm H mach 2331 Penn av
" Wm H milk 1434 Adams A
" Wm H real est agt 1840 Center av
" Wm H of W H Brown & Co 30 Schmidt bldg h 214 Stratford av Bell Phone East 1227-3
" Wm H jr clk P C A h 1022 Brown A
" Wm J engineer 504 River av A
" Wm J lab 5109 Kent av
" Wm J lab Whitney n Frazier
" Wm J lab 1920 Rush A
" Wm J lab 7640 Tioga
" Wm J plasterer 2339 Randolph A
" Wm J tobacco 150 Wabash h same
" Wm James lab Olive n McNaughton av A
" Wm L agt 916 Wylie av
" Wm L lab 87 Roberts

Huth & Swope 418 Wood St. Importing Tailors
SECOND FLOOR. Telephone 2962.

To receive Northwestern Dividends You must Carry Northwestern Policies.
Stetson Leach, Gen'l Ag't. Northwestern Mutual Life Insurance Company PARK BUILDING, 5th Ave. & Smithfield St. PITTSBURGH, PA.

252 A I have personal knowledge of when they were in business. They were not in business this last year.

Q Were they in business at any time within three or four years prior to last January, if you know?

Same objection as above.

A No, they were not.

Q. When did they quit business, if you know?

Same objection, and further it has not been shown that they have quit business.

A They quit business in 1897; they disappeared from the directory in that year; two years prior to that they were settling up the business.

Q Do you know this of your own knowledge, Mr. Dudley? A Yes, sir, I made my regular visits over there; I saw the gentlemen in the office, and neither one of these two men were there, only the parties that were in charge. I have made regular visits there for the last twenty-five years up to the last three years; I saw them, and deaths have also occurred; there were then other gentlemen there.

Q Your business of publishing and canvassing for the directory as I understand you to say, covered a period of how many years? A Twenty-five years.

Q State whether or not the Phillips & Mittensway Saw Mill & Lumber Company are in business at the present time?

Same objection as above.

A No, not that I know of.

Q I ask you, Mr. Dudley, as experienced in the directory business what, if any, would be the effect if there was an individual or a concern or firm doing business here and their name was not in the directory for any reason, what would be the effect of it, would or would you not hear of it?

Objected to as calling for a conclusion of the witness.

A Oh, yes, I would hear of it right away, of course.

Q State why?

253 Objected to as being argumentative.

A Just as soon as a book is out, why everybody is looking to see if their name is in, especially business houses, and I would have to rectify it if there was any omission, and the last book shows where I have rectified it.

Counsel for defendant moves that the answer be stricken out because it has not been shown that the witness has personal knowledge of the matters contained in his answer.

A But I have personal knowledge of these things; you bet.

Cross-Examination by Mr. Loucks.

Q I believe you stated the name of W. E. Brown did not appear in the 1901 edition of your directory of Pittsburgh in any connection? A No, sir, it does not.

Q That is, in any trade or business? A It does not.

Q And when you made that answer were you testifying from your personal knowledge or your investigation of the book? A Both, personal knowledge and investigation afterwards.

Q Have you made a careful investigation, that is, personal investigation and also made a careful personal investigation of the book before making your answer? A Yes, sir.

Q Mr. Dudley, I call your attention to page 275 of the directory just offered in evidence, and call your attention especially to the name of W. E. Brown therein, and ask you whether that name appears? A Yes, a W. E. Brown, bricklayer, but we were talking about a man in the lumber business.

Q Was not the question put to you as to whether the name of W. E. Brown appeared in any capacity whatever? A But I understood it in the lumber business; there is a W. E. Brown, a brick layer, but not a lumber man.

Q Where does this W. E. Brown, brick-layer, live?
254 A. Taylor Street, 16th Ward.

Q Then, you are mistaken when you state there was no W. E. Brown in the directory in any capacity? A Yes, I am mistaken there; I understood this to be a question directly in the lumber business; we have two W. E. Brown's, a William E. Brown, but I understood this to refer directly to the W. E. Brown in the lumber business, and with that understanding I answered the question.

Q I will ask you to read the name appearing just immediately above the name of W. E. Brown in the directory, giving the business? A W. D. Brown, Treasurer of the Rib River Lumber Company, 545 Liberty Avenue.

Q What business, if you know, are the Rib River Lumber Company engaged in? A That is all I know, that they used to be in the lumber business and sell lumber; I do not go into how they get the lumber out or where the stuff is.

Q Were they engaged in the lumber business in 1901? A That is what the book shows; I took that information up myself.

Q Do you know any of these four W. E. Brown's? A

There is only one W. E. Brown; the other three are William E. Brown; I do not know any one of these four personally.

Q You do not know what business any of them are engaged in? A Not any more than what the book shows.

Q How long have you known W. D. Brown, the Treasurer of the Rib River Lumber Company? A Well, I took that information up in the fall of 1900, and if it appears in the book prior to this it would be taken up in the fall of every year in my personal canvass.

Q Are you personally acquainted with W. D. Brown? A I would know him if he was in his office; I am only acquainted with him in a business way; I am not acquainted with Mr. Brown as well I am with Mr. Richardson here.

255 If he was in his office, and I went in there and his name was Brown, and he told me so, I should book it so, whatever his name was.

Q But you do not know anything about his business except what you learn in making a canvass? A That is all; I do not know everybody that deeply; he is not on Liberty Street now; he has changed; he is in business for himself now.

Q How many canvassers are employed in making up the Pittsburgh directory? A About eighty five men.

Q What proportion of the canvassing do you do? A All the business houses; I do eighty per cent of the business houses myself, in person.

Q What do you mean by business houses? A Why, this is a business house.

Q Do you mean the business houses in the down town district? A All the business houses all over both cities.

Q How many people are there in the city of Pittsburgh? A Well, we put this book together in one lump, and while I have figures in my office which would probably give you the number in Pittsburgh, yet I have not got them here, but the two cities now have a population of about 480,000; but we put this book into one, Pittsburgh and Allegheny are all in one; I do not separate the two cities as to population.

Q How many people are in Pittsburgh, according to your estimation? A I could not tell you; I could not answer that.

Q Do you know under what circumstances the Phillips & Mittenzway Saw Mill & Lumber Company went out of business? A I know this that I canvassed there in person every year right straight along up until the last five years, when they went out of business; two years prior to the last five there was a man—I think his name was Langton; I always saw

him in the office, but the business was being wound up six or seven years ago; and I got the name and still carried it right along until the thing dropped, about five years ago, and then that settled it; maybe it was three years prior to this time.

256 Q You were not personally acquainted with either of the members of the firm? A No; I did not pay any great amount of attention to that; you see I would go over there twenty-three years ago and they would be there, then twenty years ago, and so on—

Q How many years were they in business? A I do not know; I have not charged my memory with the fact.

Q You say they were there about twenty-three years ago? A I began to canvass for this book twenty-three years ago; when I would make my entry I would drop it right out of my mind; there would be no necessity for carrying it. You see I would go to South 20th Street twenty years ago and I would find them in, and I would follow it right up year after year, and if there was a change I would note it, and there was about seven years ago, and within five years I went down there, and as it was shut up and there was no more Phillips & Mittenzway Saw Mill & Lumber Company there it passed out of my mind; it would pass out of my mind.

Q You do not know anything about their being in business except that you went down to the place where they formerly were, and you did not find them there; is not that substantially all you know about the matter? A Well, they were out of business. Suppose Mr. Richardson goes out of business, when I go out and find his place all shut up, and I ask where is Mr. Richardson, and they say he has quit business, that settles it, then I do not do any writing for Mr. Richardson, and he will drop out of my mind. As to Phillips & Mittenzway I did not know either one of them; I have known Mr. Richardson with other things that brought him in connection with me which puts him in my mind; I would only go down there once a year and would be there only two minutes. I would just aske the question is Phillips & Mittenzway there.

Q. When they were in business they were in the lumber
257 business, were they? A They had a saw mill down there, and built barges too, a saw mill and a lumber yard; they had a regular big saw mill there.

Re-direct Examination by Mr. Richardson.

Q State whether or not, Mr. Dudley, during the long period you have spoken of you made it your business to keep posted upon firms and individuals in the different lines of business about the city of Pittsburgh? A Yes, sir.

Q And to that end do you make the proper inquiries to ascertain the fact? A Yes, sir.

Re-cross-Examination by Mr. Loucks.

Q You stated that if the name were left out of the directory you would hear of it; have you ever had business men call upon you and notify you that their names were not in the directory? A Oh, yes; I make the correction, if possible; if not, that settles it.

Q How frequently? A Every year there are probably two or three.

ROBERT L DUDLEY

On reading over the above I notice in answer to question bottom of page 6 I am made to say: "We have two W. E. Brown's a Wm. E. Brown." this I did not say, I said we have a W. E. Brown and three Wm. E. Brown.

ROBERT L. DUDLEY.

258 MR. WILLIAM H. RADCLIFF, a witness on behalf of the plaintiff, being sworn, testified as follows:

Direct Examination by Mr. Richardson.

Q What is your age, Mr. Radcliff? A. Sixty-three years old.

Q Are you a resident of the City of Pittsburgh? A No, Baldwin Township at the present time.

Q You are doing business in the city of Pittsburgh? A Yes, I am engaged in business in the city of Pittsburgh.

Q Have you been about the city of Pittsburgh for, say four or five years last past? A Yes, sir.

Q What were you doing in the fall of 1896 and the early part of 1897? A I was with the Phillips & Mittenzway Saw Mill & Lumber Company at that time.

Q In what capacity? A I was treasurer.

Q Well, state whether or not the Phillips & Mittenzway Saw Mill & Lumber Company were doing business, say in the spring of 1897?

Objected to as calling for a conclusion of the witness.

A They were not.

Q In your position of treasurer of that concern, state whether or not you had a knowledge of their affairs?

Objected to as calling for a conclusion of the witness.

A I had.

Q And whether or not you were in a position to have knowledge of when they quit business?

Same objection as above.

A Yes, sir, I was.

Q You may state if they did quit business, and when?

Same objection, and because it has not been shown that they did quit business.

A The last week in December, 1896, they quit business; they went into the hands of court then.

259 Q What do you mean by that? A The stockholders got quarrelling amongst themselves.

Q You mean they went into the hands of a receiver? A Yes, sir.

Q State whether or not, as treasurer of this concern, you were cognizant of these facts?

Objected to as calling for a conclusion of the witness.

A Yes, sir.

Q State whether or not you followed the course of that concern since that time up until, say last January, sufficiently to know whether or not they have been doing business or holding themselves out as doing business?

Objected to as calling for a conclusion of the witness.

A I have not.

Q Do you know whether they were in business during last year?

Same objection as above.

A I know they were not.

Q I do not think you understood my former question (Question re-read)? A I know they have not been in business up to the time you speak of, January 1902.

Q State, if you know, whether or not they are in business at the present time?

Same objection as above.

A They are not.

Cross-Examination by Mr. Loucks.

Q Mr. Radcliff, how do you spell your name? A Radcliff.

Q. Is there a final "e" on your name? A Not on mine; I have never used it.

Q I will show you the original notice in this case for the taking of your deposition, and ask you whether your name is spelled correctly or not?

Objected to as incompetent and irrelevant, and not cross-examination.

260 A That is not the way I have been in the habit of writing it; some of my relatives do though.

Q How is it spelled in the notice? A Radcliffe.

Q How should it be spelled? A Radcliff.

Q For how many years was the Phillips & Mittenzway Saw Mill & Lumber Company engaged in the manufacture of lumber in Pittsburgh? A From the first of June, 1892, until the last of December, 1896.

Q Was it incorporated? A Yes, sir.

Q Do you know whether the charter has ever been surrendered? A I do not.

Q Do you know who has the charter? A I have the charter.

Q You have charge of it at the present time?

Objected to as incompetent and irrelevant.

A At the present time.

Q How long was the Receiver in possession? A It took about four months to close it up.

Q In what way was it closed up? A By collecting all the assets and distributing them amongst the creditors.

Q Was there a sale of the assets? A Yes, sir; there was not any auction sale of it.

Q How were the assets sold? A Just by private sale.

Q To whom? A To whoever would buy.

Q Was the good will of the business sold? A There was not any.

Q For how much was the company incorporated? A $30,000.

Q How much did the stock-holders receive?

261 Objected to as incompetent and irrelevant.

A In that way?

Q From the assets. A They did not receive anything.

Q Who did receive it all? A The creditors.

Q Do you know whether the stock-holders have each and every one of them paid in the amount of their subscriptions to the capital stock?

Objected to as incompetent, irrelevant and not cross-examination.

A They did to the amount subscribed.

Q Was $30,000 paid in? A No, sir, there was not that much subscribed; there was $13,700 subscribed.

Q That is all that was paid in? A Yes, sir, that is all that was subscribed for.

Q Were the creditors paid off in full?

This testimony Last three questions is all under objection.

A No.

Q What business are you engaged in at the present time? A I am bill clerk for Green & Higgins Lumber Company.

WM H RADCLIFF

MR. W. D. BROWN, a witness on behalf of the plaintiff being duly sworn, testified as follows:

Direct Examination by Mr. Richardson.

Q Your name is Walter D. Brown, is it? A Yes, sir.

Q State what are your initials? A W. D. Brown.

Q What business are you in, Mr. Brown? A In the lumber business.

262 Q In the city of Pittsburgh? A Yes, sir.

Q State whether or not you are, in the pursuance of your daily vocation, in contact with the lumber interests of the city of Pittsburgh and vicinity, and whether you are conversant with the individuals and firms in that business hereabouts.

Objected to as calling for a conclusion of the witness.

A Fairly well conversant.

Q Do you know of anybody in that business in this vicinity by the name of W. E. Brown? A No, sir, I do not.

Q Or any other person of the same name as yours? A Not in the lumber business.

Q With reference to this knowledge you have spoken of, does that cover a period from January last for a year or so?

of W. Objected to as calling for a conclusion.

A From January, 1902, you mean?

Q Yes, back how long? A It would be back at least a year.

Q Have you ever been known or addressed as W. E. Brown that you know of? A Yes, I have had some mail come to me as W. E. Brown.

Q Are you in the lumber business for yourself, Mr. Brown? A I am one of the partners in a lumber firm.

A You are a partner in a lumber firm? A Yes, sir.

Q In last January or about that time were you a partner in that concern doing business—in the same way I mean? A Yes, sir.

Q Only as a member? A Only as a member.

Q What concern? A Furnace Run Saw Mill and Lumber Company.

Q State whether or not then as W. D. Brown individually you have been doing business in the lumber trade? A No, sir, I have not.

263 *Cross-Examination by Mr. Loucks.*

Q Mr. Brown, what were you doing prior to the time you became a partner in your present lumber firm? A I was with the Rib River Lumber Company.

Q For how long? A I was with them here in Pittsburgh for about nine months.

Q Nine months prior to what time? A I think it was in the latter part of November, 1900, I think I severed my connection with them; I mean as far as looking after their business here in Pittsburg.

Q You first commenced to work for them then about the first of February? A First of January, 1901, some time in January, 1901.

Q What were you doing prior to that time? A I was at Rhinelander and Toledo for the same firm.

Q For how long prior? A Since 1892.

Q And then from 1892 up to January 1st, 1900, you were engaged in business at Rhinelander, Wisconsin, and Toledo, Ohio? A Yes, sir.

Q You receive business mail now addressed to you personally? A Not in the lumber business, no; not in connection with the lumber business.

Q Who are the other partners in the Furnace Run Saw Mill & Lumber Company?

Objected to as incompetent and Irrelevant.

A James A. Bell and Ane E. Bell.

Q What particular branch of the business do you look after? A After the office and financial end.

Q Do you know whether there are any persons living in Pittsburgh by the name of W. E. Brown?

Objected to as incompetent and irrelevant.

A I cannot call to mind anybody.

Q You would not swear there were not any such per-
264 sons? A No, I would not swear that there were not any such persons.

Q And if there are any such persons you do not know what business they are engaged in, do you?

Objected to as incompetent and irrelevant.

A No, I do not.

W. D. BROWN

MR. ARTHUR B. WIGLEY, a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct Examination by Mr. Richardson.

Q What is your business, Mr. Wigley? A Manager of the mercantile agency of R. G. Dun & Company at Pittsburgh.

Q As such manager is it your business to become acquainted with the firms and individuals in the various lines of business in the city of Pittsburgh and vicinity?

Objected to as calling for a conclusion of the witness.

A It is, through the medium of my reporters, clerks and assistants.

Q You may state if you know the firm or concern called the Phillips & Mittenzway Saw Mill & Lumber Company who were in the lumber business? A There was a firm by the name of the Phillips & Mittenzway Saw Mill & Lumber Company up to about 1896 or 1897; I think it was Phillips & Mittenzway Saw Mill & Lumber Company we had on our books.

Q State if you know whether that concern was in business in January last?

Objected to as calling for a conclusion of the witness.

A I do not believe it was.

Q Do you know whether or not it went out of business and ceased to do business?

265 Objected to as calling for a conclusion of the witness.

A My understanding is that it went into the hands of a receiver and was wound up in 1896 or 1897.

Counsel for the defendant moves that the answer be stricken out as it shows that the witness does not have personal knowledge of the matter concerning which he is testifying.

Q You publish, Mr. Wigley, what you call a reference book of the mercantile agency? A Yes, sir.

Q You might state whether or not in January last or some time prior thereto the name of the Phillips & Mittenzway Saw Mill & Lumber Company appeared as a concern doing business—in that reference book? A Yes, sir, it appeared in last January's reference book.

Q Did it appear prior to that time, and if so, when? A The earliest edition that I have in the office is January 1901; it appeared in that.

Q You may state, if you know, how it came to so appear? A I presume it was an over-sight of the rating clerk.

Q Now, I ask you with reference to the name of one W. E. Brown; did that appear in your reference book as a person engaged in the lumber business? A Yes, sir.

Q And when did that appear, if you know? A It appeared as far back as January 1901, up to March 1902.

Q State if you know whether there is any such persons as W. E. Brown enggaed in the lumber business? A Not to my knowledge.

Q In this vicinity? A Not to my knowledge; I mean in Pittsburgh.

Q How does it come, if you know, that this name W. E. Brown was printed in your reference book as you have said? A It is impossible to tell now; we destroy our old records from time to time, and we have nothing on our books whatever to indicate any W. E. Brown in business in Pittsburgh at the present time.

266 *Cross-Examination by Mr. Loucks.*

Q What is the name of the first concern in regard to whom you have been testifying? A The Phillips & Mittenzway Saw Mill & Lumber Company.

Q Was that a partnership or a corporation? A The

firm of Phillips & Mittenzway was originally a partnership, and according to my recollection they started to incorporate, and I rather think it fell through before it was accomplished; that is my indistinct recollection; they got into trouble in 1896 and 1897, and I think before they got things fixed up it fell apart and was wound up.

Q When did they go out of business, if you know? A 1896 or 1897.

Q How did it happen that you rated them five years after they went out of business? A When a concern is reported out of business it is apt to be overlooked if it slips through the rating clerk's hands; it is apt to be over-looked until we have a general house-cleaning every once in a while.

Q How often do you have these general house-cleanings? A All the business is revised twice a year, except in the large cities, where we are continuously at work, and in a large city if the rating clerk should over-look a name which is reported to be out of business, it would be apt to be overlooked for two or three issues until we take every name in detail from the reference book, and our reports being made in checking off the records. Now, the concern of Phillips & Mittenzway being reported as out of business it was the clerk's duty to say that it was out of business, and he would lay that aside and wind it up.

Q Then, as I understand, you have a house-cleaning every six months. A No, we have a regular revision every six months throughout the country; in the cities it is continuous.

267 Q If you have a house-cleaning every six months how did it happen this was overlooked for five years?

Objected to as incompetent and irrelevant.

A Because in the cities we revise from the detailed reports on the binders; that concern being reported out of business it would be passed, presumed to be wound up, and may have remained in the reference book by mistake.

Q You say it was reported out of business? A It was reported out of business in 1897; consequently when the clerk whose business it was to see that the concerns of Pittsburgh were revised, it wast cast aside, and it might remain on the book for a long while.

Q Why was it not detected on the extra revision, six months afterwards?

Objected to as incompetent and irrelevant.

A Because, as I said, the clerk who is examining the records seeing that it was out of business would not report it again; he does not refer to the reference book but to the detail reports, the error being on the part of the rating clerk who checks these reports; the reporter assumes that it has been taken out of the book.

Q And that was overlooked by the rating clerk for each revision for five years? A The rating clerk would not have anything on it because the reporter would make no reports on it.

Q Mr. Wigley, is it not almost impossible for anyone to make a business directory without small mistakes of this kind creeping in?

Objected to as incompetent and irrelevant.

A It is quite impossible to be absolutely correct.

Q Is it not very frequently the case that two letters of a similar sound are often confounded? A It is not very frequent.

Q Such as D and E? A It is not very frequent.

268 Does it not sometimes occur? A It has occurred, no doubt.

Q Has it not sometimes occurred that a name the final letter of which is silent would be spelled as though that final silent letter were not in the name?

Objected to as incompetent, irrelevant and not cross-examination.

A It is hardly likely because the reporters as a general thing take the names from the party himself when it is first reported by interview; also inquiries are made written on tickets to the office.

Q You say it is hardly likely, but has it not been done; I do not mean that it is customary for such mistakes to occur, but are there not such exceptional mistakes made?

Objected to as incompetent, irrelevant and not cross-examination.

A There might be but I hardly see how it could occur in the original report.

Q If the original reporter were inclined to be careless it might occur, might it not?

Same objection as above.

A Well, of course, it might, but it is hardly likely for the reason that the inquiries are made on a written ticket; the

reporter interviews the party reported, and there is quite a complete check on everything of that sort; of course, it might occur.

Q How did your reporter happen to make a mistake in the name of W. D. Brown? A I do not know.

Q How did it happen that the name was not corrected on revision? A As I have stated, we cannot find any report of the concern on our records; I presume the concern was either reported as out of business or never existed, and the sheet has been thrown away.

269 Q You say you cannot find your reports, what reports do you refer to? A The detail reports on W. D. Brown.

Q For what books? A These are the detailed reports on the binders.

Q For what books of R. G. Dun & Co.? A These are not in the books at all; they are in the records.

Q What books of R. G. Dun & Company are the subject matter of the reports you refer to as being incorporated?

Objected to as incompetent, irrelevant and not cross-examination.

A Of what edition?

Q I mean for what year? A Why, I have answered that, that the name appears up to March 1902, as far back as we have our files, that is January, 1901.

Q Well, then, is it peculiar to this individual case of W. D. Brown that the files, the original reports, happen to be missing, A No, it is not; all dead-wood we eliminate from our record from time to time.

Q About how many reports which have been handed in during the past year and a half have been eliminated or destroyed?

Same objection as above.

A Why, there would be none the last year and a half destroyed.

Q Had you not a report on W. E. Brown or W. B. Brown during the last year and a half? A No, no W. E .Brown and no W. D. Brown, unless it would be embodied in the concern of which he is a member; we have not an individual.

Q How long do you keep your reports before they are destroyed? A Do you mean after they are out of business?

Q No, how long do you keep reports after the reports are handed in?

Same objection.

270 A The reports are always kept as long as the concern is a living concern, in business.

Q You saw Walter D. Brown that testified in this case? A Yes, sir.

Q Was he the gentleman who was meant by the name of W. E. Brown on your book? A I do not know.

Q How many W. E. Browns are there in this city? A I do not know; I do not think there are any in the directory just now.

Q In any business? A I think not. There may be a dozen for all I know, but I do not know.

A. B. WIGLEY

271 United States of America,
Western District of Penna,
(County of Allegheny, Pennsylvania. } ss.

I, Leander Trautman, a notary public within and for Allegheny County, in the state of Pennsylvania, do hereby certify that the reason for taking the foregoing depositions is, and the fact is that the testimony of the said witnesses is material and necessary for the complainants in the cause in the caption of the said depositions mentioned, and that the said witnesses and each of them lives and at the time of the taking of the said depositions did live at & near the city of Pittsburgh in the county of Allegheny and State of Pennsylvania, more than one hundred miles (100) from the City of Chicago, in the County of Cook and State of Illinois, where the court at which said cause is to be tried was appointed by law to be held.

I further certify that notification of the time and place of the taking of the said depositions made and signed by the solicitors for the complainants was duly served on the solicitors for the defendants, to be present at the taking of the said depositions and to put interrogatories to the said witnesses if they might think fit.

I further certify that on the 27th day of October, 1902, I was attended at the place named in the said notification for

the taking of the said depositions by Chas. O. Loucks, Esq., of solicitors for the complainants and O. S. Richardson, Esq. of solicitors for the defendants, and also by the witnesses, Walter D. Brown, William H. Radcliff, Robert L. Dudley and A. B. Wigley who were of sound mind and lawful age and the said witnesses were and each of them was by me carefully examined, cautioned and sworn to testify to the truth the whole truth and nothing but the truth; that the said depositions were in the presence of the witness—taken down in short hand by me also a stenographer, and by me reduced to typewriting, that after carefully reading the same to the said witnesses they and each of them subscribed the same in my presence; that I retained the said depositions in my possession for the purpose of sealing and directing the same with this certificate of the reasons aforesaid for taking the said depositions with my own hand to the court for which the same was taken.

272

And I do further certify that I am not of counsel or attorney for either of the parties in the said deposition and caption named or in any way interested in the event of the said cause in the said caption named.

In Witness Whereof I have hereto set my hand and affixed my notarial seal this 28th day of October in the year of our Lord one thousand nine hundred and two.

LEANDER TRAUTMAN.

(Seal) *Notary Public.*

My commission Expires Jany. 19, 1903.

(Endorsed) Filed Oct. 31, 1902, Marshall E. Sampsell, Clerk.

273 DEPOSITIONS OF THORVALD SOLBERG, ARTHUR CRISFIELD, C. POWELL GRADY, AND FREDERICK WILLIAM ASHLEY.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois—

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the Will of Robert G. Dun, deceased,

vs.

Lumbermen's Credit Association, William C. Clancy and Burton W. Stadden

In Equity.

Notice for taking of depositions.

To Messrs. Atwood & Pease,

Defendants' Solicitors.

Gentlemen:—

Please take notice that on the 25th day of October 1902 at ten o'clock A. M. before H. D. Gordon, Notary Public, or in case of his absence or inability to act, before so some other competent officer duly authorized under the statutes so to act, at the office of J. Miller Kenyon, No. 617 Fourteenth street, N. W. in the City of Washington in the District of Columbia, we shall take the depositions of the following witnesses who reside more than one hundred miles from the place of trial in the above entitled cause, to-wit: Thorvald Solberg, and others. The examination of the said witnesses will continue from day to day until completed. The said depositions will be read in evidence on the part of the complainants
274 on the trial of the said cause. You are invited to attend and cross examine if you so desire.

HOYNE, O'CONNOR & HOYNE,
OFFIELD, TOWLE & LINTHICUM,
Solicitors for complainants.

Chicago, October 18th 1902.

Received copy of the above notice this 18 day of October, 1902.

ATWOOD AND PEASE.
Solicitors for Defendants.

275 IN THE CIRCUIT COURT OF THE UNITED STATES, No

For the Northern District of Illinois—

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the Will of Robert G. Dun, deceased,

vs.

Lumbermen's Credit Association, William C. Clancy and Burton W. Stadden

In Equity.
Notice for taking of depositions.

To Messrs. Atwood & Pease,
Defendants' Solicitors.

Gentlemen:—

Please take notice that on the 25th day of October 1902 at ten o'clock A. M. before H. D. Gordon, Notary Public, or in case of his absence or inability to act, before some other competent officer duly authorized under the statutes so to act, at the Library of Congress No street in the City of Washington in the District of Columbia we shall take the depositions of the following witnesses who reside more than one hundred miles from the place of trial in the above entitled cause, to-wit: Thorvald Solberg and others. The examination of the said witnesses will continue from day to day until completed. The said depositions will be read in evidence on the part of the complainants
276 on the trial of the said cause. You are invited to attend and cross examine if you so desire.

HOYNE, O'CONNOR & HOYNE,
OFFIELD, TOWLE & LINTHICUM,
Solicitors for complainants.

Dated, October 21st 1902,

Received copy of the within notice this 21st day of October A. D. 1902.

ATWOOD & PEASE,
Solicitors for Defendants.

277 IN THE CIRCUIT COURT OF THE UNITED STATES

For the Northern District of Illinois

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the Will of Robert G. Dun, deceased,

vs.

Lumbermen's Credit Association, William Clancy and Burton W. Stadden.

} In Equity.

At the City of Washington, in the County of Washington, and District of Columbia, on this twenty-fifth day of October, 1902, at 10 o'clock, A. M. of said day, before me Harry D. Gordon, a Notary Public within and for Washington City, Washington County, in the District of Columbia, at the Library of Congress, personally appeared J. Miller Kenyon, Solicitor for Complainants, and Loucks, Solicitor for Defendants.

And thereupon the following proceedings were had pursuant to notice and the attendance of counsel.

Complainant called as a witness in their behalf Thorvald (Seal) Solberg, who being first duly sworn by me, testifies as follows:—

Direct Examination.

By Mr. Kenyon.

Q. Mr. Solberg, will you be kind enough to state your name? A. Thorvald Solberg.

278 Q. Do you reside within the District? A. Yes, I do.

Q. Have you any position connected with Library of Congress? If so, state what that position is. A. I am the Register of Copyrights under the act of February 19th, 1897.

Q. As the Register of Copyrights as you state you are, will you state briefly what line of work of the department comes under your charge? A. The supervision and direction of the copyright office. (Refers to the Copyright Laws.)

The act to which I referred appointed a Register of Copyrights who shall under the direction of the Librarian of Congress, perform all the duties relating to copyrights.

Q. Then does the entry of titles and the deposit of books, etc. come under your charge? A. Yes.

Q Were you the Register of Copyrights during the year, from the beginning to the end of 1901, A. D.? A. Yes, I was.

Q. Will the witness state if in his official position, he has ever had anything to do with the title or edition of the work of R. G. Dun and Company, the plaintiff in this case? A. Can you give the title of the books or the titles?

Q. I refer to the book or title entered by R. G. Dun and Company, the title page of which is "The Mercantile Agency, Reference Book, (and Key) containing rating of Merchants, Manufacturers and Traders, generally, throughout the 279 United States and Canada"/ A. The titles for a number of volumes of that work were entered during the three years, 1899, 1900 and 1901 in this office.

By Mr. Loucks:

The counsel for the defendants moves that the answer to the last question be stricken out as being a conclusion and as not being responsive to the question.

Q. Referring to the year 1901, will the witness state if officially he had any connection with the said book or title on or about January 24th, 1901? A. The records of the copyright office show that on January 24th, 1901, there was received in this office a title reading as follows:—"The Mercantile Agency. Reference Book (and Key) containing rating of merchants, manufacturers and traders, generally, throughout the United States and Canada, March 1901, Vol. 132. R. G. Dun & Co., Dun Building, 290 Broadway, New York City"" This title was accompanied by a note reading under the head of The Mercantile Agency, R. G. Dun and Company, New York City, January 23, 1901. "Librarian of Congress,

Washington, D. C.

Dear Sir:—

We beg to enclose herewith title page of the March, 1901 edition of The Mercantile Agency Reference Book, with $1 fee. Kindly have the same copyrighted as usual and oblige,

Yours truly,

R. G. DUN AND COMPANY".

By Mr. Loucks:—

280 The counsel for the defendants moves to strike out the answer of the witness as not being responsive to the question and as not being the best evidence.

Q. Will the witness state whether or not he read from the original records as sent to the office. A. The title was read from the original title page, which was filed and received in this office on the date stated and the letter is the original letter received on the date stated, January 24th.

Q. Were the official dates on the title and letter just read from?

By Mr. Loucks:

Object to the question as calling for a conclusion of the witness and as calling for secondary evidence.

By the Iwtness:—

A. The date were put upon these papers by means of a stamp in the office of the copyrights and in the case of the letter was January 24th, 1901 and in the case of the title was the same date, January 24th, 1901.

By Mr. Loucks:—

Counsel for defendants moves to strike out the answer for the reasons above mentioned.

By Mr. Kenyon:

Q. Will the witness state on what date the papers just read from, that is the title, was actually received in the office of the Librarian of Congress.

By Mr. Loucks:—

Counsel for the defendants object to the question because it calls for a conclusion of the witness and because it has not been shown that he has any personal knowledge of the matter inquired about.

281 By the witness.

A. The date mentioned was the actual date of the receipt of the title in the office.

Q. Will the witness state whether or not at any subsequent time any copies of the edition to which the title refers were received by the Librarian of Congress by mail, and if so when. (Reads from the record) The answer would be two copies were received, but I have at this time no knowledge as to whether they came by mail or not.

By Mr. Loucks:—

I move to strike out the answer as being a conclusion of the witness; it not having been show that he has personal knowledge of the matter inquired about.

By Mr. Kenyon:—

Q. State the date when the two copies referred to were received.

By Mr. Loucks:—

I object to the question as calling for a conclusion of the winess as it has not been shown that the witness has any personal knowledge as to the matter inquired about.

By the witness:

A. (Witness refers to record) The two copies were received on February 25th, 1901.

(Seal)

Q. Will the witness state whether or not any certificate or otherwise was issued to R. G. Dun and Company showing a deposit of the title testified to by them and the copies of the books.

By Mr. Loucks:—

I object to the question as calling for a conclusion if the witness

282 By the Witness.

A. R. G. Dun and Company as the applicants were sent a certificate which is a sealed copy of the records showing that this title was entered in the record books under date of January 24th, 1901 as Clas A. XXC No. 1672. (Refers to the Records).

By Mr. Kenyon:

Q. Please state whether the date on the book or title would be the date during its official life in the Library of Congress or the Office of the Register of Copyrights? A. The answer to that question would be that the copyright laws expressly provided the date which shall go upon the record book as the date of the filing of the title. Section 4957 of the Revised Statutes relating to the Library of Congress provides as follows:—

Witness reads)

"Library of Congress, to wit:

Be it remembered that on the day of A. B. of hath deposited in this office the title of the book" etc. The date of entry of the title is the same date that the title is received in the office.

Q. Will the witness state the actual date of the title of the book just referred to. The actual date of the records show?

By Mr. Loucks:

I object to the question because it calls for secondary evidence.

By the witness:

A. (Reads from the Record) The records which agree with the mark upon the title received as Class a XXC, 283 and No. 1672 and the date of the receipt of the title as shown by the record is as follows:—

(Reads) "Be it remembered that on the 24th day of January, 1901 R. G. Dun and Company of New York, N. Y., have deposited in this office, the title of the book, the title of which is in the following words:—

The Mercantile Agency. Reference Book (and key) Containing ratings of Merchants, Manufacturers and Traders, generally throughout the United States and Canada. March, 1901. Vol. 132. R. G. Dun & Co., New York."

Q. Does the witness read from the original record or not? A. The answer has been read from the only record book kept one of the regular volumes of the series, the volume for 1901, class A of that year.

Q. Is the date given by the witness the date which this title or this book has borne throughout its existence in the office of the Register of Copyrights? A. The date given on the record is the date of the receipt of the title, but the record makes no mention of the date of the receipt of the book. The date on the record just referred to is the date the title was received in this office and that is January 24, 1901, when the title was actually received.

Q. Have you before you the actual copy of the edition about which you have been testifying of R.. G. Dun and Company? A. I have before me one copy of the two which were deposited by R. G. Dun and Company as required by the copyright laws.

Q. Will the witness state what date that copy bears? A. (Refers to the book.) That copy was received, was one of the two copies received on the 25th day of February, 1901.

284 By Mr. Loucks:

I move to strike out the answer as being a conclusion of the witness.

By Mr. Kenyon:—

Q. Is there any other record than the date on the page from which you have just read in this office?

By the Witness:—

The Copyright Act of March, 1891 provides that there

should be supplied from this office a catalogue of the titles entered for each week and that the record should be published by the Secretary of the Treasury and the record is published and doubtless this entry will be found in the catalogue to which I have just referred.

Q. Than the date in the catalogue would be taken from the date stamped on the title? A. Undoubtedly, it is taken from the date of the receipt of the title which is stamped on the title when it is received in the Library of Congress.

Q. Then the date stamped on the book is the original entry date of that book. A. The answer would be that it certainly is, in this case, as in all other cases.

Q. Will the witness state whether there was deposited with the Librarian of Congress on or about May 22nd, 1901 any other title by the Dun people similar to that about which he has heretofore testified?

By Mr. Loucks:

Counsel for the defendants objects to the question as calling for a conclusion of the witness, because it has
285 not been shown that the witness has personal knowledge of the matter inquired about.

By the witness:—

A. (Referring to the Records) The answer is that on May 22nd, 1901, there was received in the Copyright Division of the Library of Congress the title of the edition of the Mercantile Agency Reference Book.

Q. Where did you obtain that date? A. The date of the receipt in this case as is customary in all cases is stamped on the title on the day of its receipt in this office in indelible ink.

Q. Will the witness state whether that is the date which the title bears throughout its official life in this office? A. Yes, it is.

Q. And also throughout its life in the Library of Congrss? A. The Copyright Office is the Copyright Division of the Library of Congress: under the act of February 19, 1897 this division was created by the appointment of the Register of Copyrights who is under the supervision of the Librarian of Congress and the dates which are put upon the titles are the dates of their receipts in the Library of Congress of which the Copyright Office is a part.

Q. Have you before you the original title which was deposited on May 22nd, 1901? A. Yes.

Q. Will the witness please read it?

of Sol- By Mr. Loucks:—

I object to the question as calling for secondary evidence.

286 By the Witness:—

A. (Reads. "The Mercantile Agency. Reference Book (and Key) containing ratings of Merchants, Manufacturers and Traders generally throughout the United States and Canada. July, 1901. Vol. 133. R. G. Dun and Company, New York, N. Y."

Q. How did you come to enter that title in your records? A. The title was accompained by the usual letter of application from R. G. Dun and Company, reading as follows:— (Reads) The letter is dated New York, May 21, 1901.

"Librarian of Congress,
Washington, D. C.

Dear Sir:—

Enclosed herewith please find title page of the forthcoming July edition of our Reference Book with $1.00 fee accompanying. Will you be kind enough to have the same copyrighted as usual and very greatly oblige,

Yours truly,
R. G. DUN AND COMPANY".

Q. Please state the date as given that letter by the office of the Register of Copyrights? A. The date of the receipt of the letter is May, 22, 1901, being remittance thirty-four of that date.

Q. From where did you obtain that date? A. That date is the date on which this letter was received in this office and the stamp thereon shows that fact.

Q. Were not copies of the edition to which that title refers received by this office, and if so please state the date when the copies were received.

By Mr. Loucks:

I object to the question because it calls for a con-
287 clusion of the witness because it has not been shown that the witness has personal knowledge of the matter inquired about.

A. There were two copies of the books to which the title refers received in this office (reads) June 27th, 1901.

Q. Please state how you obtained that date which you have just read? A. The date is recorded when the two copies were received and reads as follows: (Reads) "Library of Congress, two copies received, June 27th, 1901 Class A, XXC, No. 9907".

Q. Is the date which you have just read the date which those copies bear through their entire existence in the Library of Congress? A. The date which it bears is the date of the copyright deposit. Of course, other dates may be put on it not relative to copyrights, that is, dates may be put on the Library of Congress copies there that do not relate to the copyright.

Q. Will the witness state how many copies were received. A There were received two copies of the book about which I have been testifying.

Q. By whom were they deposited? A. By R. G. Dunn and Company as claimants of the copyright.

Q. Will the witness state whether the records of the office show any certificate of the title or titles, etc. issued?

By Mr. Loucks:—

I object to the question as calling for secondary evidence.

By the witness:

A. A certificate was furnished R. G. Dun and Company for the entry of the title.

Q. Have you the original certificate? A. The origi-
288 nal certificate is the entry upon the record book.

Q. Will the witness read the record from the record book?

By Mr. Loucks:—

I object to the questions as calling for secondary evidence.

A. Reads)" Class a XXC No. 9907.

Library of Congress, to wit,

Be it remembered that on the 22nd day of May, 1901 R. G. Dun and Company of New York, N. Y. hath deposited in this office, the title of the book, the title of which is in the following words, to wit,

The Mercantile Agency. Reference Book (and Key) containing ratings of Merchants, Manufactures and Traders generally throughout the United States and Canada. July 1901. Vol. 133. R. G. Dun and Company, New York, the right whereof they claim as proprietors in conformity with the laws of the United States respecting copyrights."

Q. Will the witness state whether or not this office ever received similar title from R. G. Dun and Company during the month of September, and if so what was the date of its receipt?

n of
d Sol-

By Mr. Loucks:—

I object to the question as calling for a conclusion of the witness because it has not been shown that the witness has personal knowledge as to the matter inquired about.

By the witness.

A. (reads) The next title in sequence is for volume 134 and was received on August 5th, 1901 for September, 1901.

Q. Is that the date when it was received in this office?

By Mr. Loucks:—

289 I object to the question as calling for a conclusion of the witness because it has not been shown that the witness has personal knowledge of the matter inquired about.

By the Witness.

A. That is the date when it was received in the Library of Congress.

Q. Will the witness please read the title so received?

By Mr. Loucks:—

I object to the question because it is double; it has not been shown that it was so received.

By the Witness.

A. (reads) The Mercantile Agency. Reference Book (and Key) containing rating of Merchants, Manufacturers and Traders Generally throughout the United States and Canada. September 1901. Vol. 134. R. G. Dun and Company, New York."

Q. Will the witness state the date when that title was actually received in this office?

By Mr. Loucks:—

I object to the question because it has not been shown that the witness has personal knowledge of the matter inquired about.

By the Witness.

A. (Refers to Record) The title was received in the Office of the Librarian of Congress, Copyright Division on August 5th, 1901.

Q. Did any letter accompany the title from R. G. Dun and Company and if so, please read it? A. The usual letter accompained it reading as follows:— (Reads)

"New York, August 2, 1901.

290 Librarian Of Congress,
Washington, D. C.

Dear Sir:—

Enclosed herewith please find title page for the September edition of our Reference Book which be kind enough to have copyrighted as usual and oblige,

Yours truly,
R. G. DUN AND COMPANY."

Q. Does that letter which the witness has just read bear any other date than that given it by the writers? A. That letter was accompained by one dollar fee and was dated as having been received on August 5th, 1901 in this office and was the 81st remittance for that date and was so recorded in the book of receipt for that date.

Q. Have you any record of having issued a certificate to the Dun people? A. The title was recorded as Class A, XXC, No. 14332 and is stamped with the fee which was paid as $1 which involves the sending of a certificate.

By Mr. Loucks:—

Counsel for defendants moves that the answer to this question be stricken out as not being responsive to the question.

Q. Have you any record other than the title attached to the letter which you have just read relating to the deposit of the title? A. The title attached to the letter of application is the original title and the letter is the original letter received from the applicants and both are a part of the archives of the office.

291 Q. Is there any copy kept of the receipt of that title and if so please read it?

By Mr. Loucks:—

I object to the question as calling for secondary evidence.

By the witness:—

A. The title was copied into the usual record book covering the period of the receipt of title for the period when the title was received and the class in which it belongs and the record reads as follows:—

Reads) "1901 Class A., XXC, No. 14332. Library of Congress, to wit:—

Be it remembered that on the 5th day of August, 1901, R. G. Dun and Company of New York, N. Y. have deposited in

this office the title of the book, the title of which is in the following words, to wit:—

The Mercantile Agency. Reference Book (and key) containing ratings of Merchants, Manufacturers and Traders generally throughout the United States and Canada. September 1901. Vol. 134 R. G. Dun and Company, New York, the right whereof they claim as proprietors in conformity with the laws of the United States respecting copyrights".

Q. Will the witness state whether any copies of the edition to which the title refers were received by the Librarian of Congress and if so what was the date of the receipt.

By Mr. Loucks:

I object to the question because it has not been shown that the witness has personal knowledge of the matter inquired about.

By the witness:—

292 A. (Refers to the Record) Two copies of the edition the title of which has been read for September 1901, Vol. 134 were received in the office of the Librarian of Congress, Copyright Division on August 27th, 1901.

Q. Is that copy from which you have just read stamped with the date of its receipt in any manner? A. The answer is that it was stamped on the day of its receipt in the office of the Librarian of Congress.

Q. Will the witness state what that date is? A. (reads) August 27th, 1901. This is the date of the receipt of the books.

Q. Then the dates given by the witness are the date on which the copies were received in this office.

By Mr. Loucks:—

I object to the question because it has not been shown that the witness has personal knowledge of the matter inquired about.

By the Witness:—

A. The date put upon the book is the date put there on its receipt in the office of the Librarian of Congress of which the Copyright Division is a part.

Q. I will ask the witness to state whether or not the records show a deposit of any copies to a similar book by R. G. Dun and Company of a January edition for 1901? A. One copy of the book, The Mercantile Agency. Reference Book, etc. for January, 1901, Vol. 131 is before me and was

(Reads) received at the Library of Congress, Copyright Office on December 22, 1900.

Q. How many copies were received? A. Two copies
293 were received, one copy of which is the book which I now have before me.

Q. State the date that that copy of which you have spoken bears? A. (reads) Two copies were received December 22, 1900.

Q. When is that date put upon the book? A. The date is put upon this book in the usual way, the date stamped upon the book on the day it is received at the Library of Congress.

Q. Is that the date the books were actually received? A. Yes, it is the date the books were actually received.

Q. Did R. G. Dun and Company deposit the title for that book of which you have just been testifying at any time? If so, give the date of such deposit? A. The title for the volume in question lies before me, being part of the original archive of the Library of Congress, (Reads) It is stamped as having been received on November 22nd, 1900.

Q. Was that the date the title was actually received. A. That date is the date when the title was actually received and was remittance No. 2 for that day.

Q. Will the witness please read the title to which he has just received? A. (Reads) The Mercantile Agency. Reference Book (and key) containing ratings of Merchants, Manufacturers and Traders, generally throughout the United States and Canade. January 1901. Vol. 131. R. G. Dun & Co., New York, N. Y."

Q. Was any letter received from R. G. Dun and Company together with the title which you have just read? A.
294 The usual letter accompanied the title, reading as follows:—

(reads)

"New York, November 21, 1900.

Librarian of Congress,
Washington, D. C.

Dear Sir:—

Enclosed herewith please find title page of our forthcoming Reference Book together with the usual fee of $1. If you will be kind enough to have the same copyrighted as usual you will oblige,

Yours truly,
R. G. Dun and Company."

Q. Does that letter bear any date stamped upon it by your office? A. The letter itself bears no date of receipt, but the letter is pasted in the application jecket used at that time and the jacket bears the date of receipt. Through some clerical inadventence there was no date stamped upon this letter.

Q. Will the witness state whether that letter was received at the time the title page was received? A. The evidence would go to show that the letter accompanied the title. It is filed in the application jacket at the time the title was and on the day they were received.

Q. Have you any record of a certificate or of an entry of the title? If so please read it? A. The title in question is recorded in the volume of the regular series of record book for the period when that title was received and reads as follows:—

(Reads) "1900, Class A., No. 28652.

Library of Congress, to wit:—

295 Be it remembered that on the 22nd day of November, 1900 R. G. Dun and Company of New York, N. Y. hath deposited in this office the title of the book, the title of which is as follows, to wit:—

The Mercantile Agency. Reference Book (and Key) containing ratings of Merchants, Manufacturers and Traders generally throughout the United States and Canada. January, 1901, Vol. 131. R. G. Dun and Company, the right whereof they claim as proprietors in conformity with the laws of the United States respecting copyrights."

Q. Will the witness state if there be an custom prevailing in this office as to the stamping of the mail received, especially titles or books as required by law?

By Mr. Loucks:—

I object to the question as calling for a conclusion of the witness and it had not been shown that the witness has any personal knowledge of the matter inquired about?

By the Witness:—

A. The custom was one instituted by myself as to the stamping of the mail and is as follows:

The mail is received in the Library of Congress by the regular mail division. All sealed matter is transferred in losked bags to the copyright office to a locked room and there it is opened and when it has been opened it is stamped with a rubber stamp with indelible ink bearing the date on which

it is received. This stamp is changed each day. It is well understood that as each letter is taken from the envelope it is stamped with that date.

By Mr. Loucks:—

I object to that part of the witness' answer which re-
296 lates to what is well understood.

Q. Will the witness state whether that custom is ever deviated from? A. The custom is never deviated from in the case of titles which are received for entry which are stamped with the date on which they are received in the Library of Congress. It is never deviated from to give any date on the title except the date when they are actually received, excepting in some cases when the title is accompanied with a direct request that it shall not be entered until some subsequent date and in such cases when the mail comes in, a note is made of the request and at the subsequent date, that is the date which is requested by the letter accompanying the title, the title is entered. Those are the only cases in which the custom is ever deviated from. The titles are never dated prior to their receipt.

Q. Was there any request from R. G. Dun and Company for a subsequent date as to the entry of the title of the edition for the January number, 1901. A. None as regards the title we have examined.

By Mr. Loucks:—

I move to strike out the answer of the witness as being a conclusion of the witness, it not having been shown that he has any personaly knowledge of the matter inquired about.

By Mr. Kenyon:—

Q. Then do the dates appearing upon the several titles and editions of the R. G. Dun and Company books which you have given represent the actual dates on which they were received?

By Mr. Loucks:—

I object to the question as calling for a conclusion of
297 the witness because it has not been shown that the witness has personal knowledge of the matter inquired about.

By the Witness:—

A. They show the actual dates of receipt.

Q. During your incumbrancy of the office of the Register of Copyrights, have you ever known any variation of the custom of which you have testified. A. I do not know of any such case.

Cross-Examination.

By Mr. Loucks.

Q. Mr. Solberg, have you any personal independent knowledge of the dates upon which any of the books or any of the titles named, concerning which you have testified, were received? A. I should have to answer that it is very probable that I did see them when they were received, but that there was nothing about them to make any impression on my mind as to whether I received them or not. It is very probable that I did.

Q. Then you have no personal, independent recollection?

By Mr. Kenyon:—

I ob ject to the question as putting words into the mouth of the witness which he did not utter and trying to draw a conclusion in this manner.

By the witness:—

A. I could not remember all the deposits that were received. Last year there were over one hundred and sixty-nine thousand articles. It does not follow that they were not brought to my notice at the time, but, of course, I cannot say, I have any personal recollection.

298 Q. What do you personally do in regard to the receipt of the books and titles under the copyright laws? A. My connection with the receipt and stamping of these titles and books is that I have devised the method by which the titles are dated and the method is carried out through my assistants under my supervision.

Q. Through your assistents? A. Through my assistants.

Q. Do you personally stamp the date upon each book and title? A. I do not.

Q. Do you personally stamp the date of the receipt upon any of the books and titles which are received? A. Sometimes if the title is brought directly to me as it occassionally done, I stamp it.

Q. It is not the custom for you to personally stamp them? A. Only in such cases as I have referred to.

Q. You did not personally stamp the date or make any mark or impression of any kind, that you have any recollection of, upon any of the books or titles concerning which you have testified. A. I think not.

(Witness examines the books and titles.)

Q. Did R. G. Dun and Company register the title of any books or deposit copies of any books in the Registers office or with the Librarian of Congress during the years of 1887, 1888 and 1889.

By Mr. Kenyon:—

Counsel for the plaintiss object to the question
299 on the ground that it is not in any sense responsive to the direct examination of the witness, no question whatever, having been asked him in regard to any of the editions in any year excepting the year 1901.

A. The indices of the Copyright Office indicate that several titles were so registered.

Q. What are the titles? A. (Reads from the Records.—)

"Received on the 29th day of December 1886 from R. G. Dun and Company, title of The Mercantile Agency Reference Book, Vol 75 for January 1887.

"On February 28th, The Mercantile Agency for March 1887, Vol. 76.

On July 2, 1887 were received the title The Mercantile Agency Reference Book etc. for July 1887, Vol. 77.

On December 29th, 1887 was received the volume of the same series for January, 1888, volume 79. Mercantile Agency Reference Book for January, 1888.

On August 31st, 1887 was received the title for The Mercantile Reference Book for September, 1887, Vol. 78.

In 1888 four entries were made, the first was received on March 1st, 1888 title for the edition The Mercantile Agency Reference Book, March, Volume 80.

On the 22nd day of June, 1888 was received the title The Mercantile Agency Reference Book for July, 1888, Volume 81.

On August 30th was received the title of the edition The Mercantile Agency Reference Book for September, 1888.

On the 28th day of December 1888 was received the title The Mercantile Agency Reference Book for January, 1889. Vol. 83.

300 On the first day of March, 1889 was received the Mercantile Agency for March, 1889, Volume 84.

Q. Have two copies of all the book, the title of which you have mentioned been deposited in the office of the Librarian of Congress by R. G. Dun and Company? A. The Register's Office show that all the cases referred to, there were deposited two copies which are credited as having been received.

Q. Will you please give the dates of such deposits? A. The dates of the deposit of the two copies in the case of the different editions of which the titles have been read as shown by the credits upon the record books in the Register's Office are as follows:—

Reads—) For the issue of January 1887, volume 75, two copies were received January 8, 1887.

For the issue of March, 1887, volume 76, two copies were received March 8, 1887.

For the issue of July, 1887, volume 77, two copies were received on July 12th, 1887.

For the issue of September 1887, volume 78, two copies were received on September 5, 1887.

For the issue of January, 1888, volume 79 two copies were received December 29th, 1887.

For the issue of the edition for March, 1888, volume 80 two copies were received March 8th, 1888.

For the issue of July 1888, volume 81 two copies were received on June 28, 1888.

For the issue of the books of September 1888, volume 82, two copies were received September 6, 1888.

For the issue of the books for January 1889, volume 301 83, two copies were received January 4th, 1889.

For the issue of the edition of March 1889, volume 84, two copies were received March 7th, 1889.

By Mr. Kenyon:—

Of course, the counsel for the plaintiffs object to all this line of examination on the ground that it is not in any way responsive to the direct examination.

THORVALD SOLBERG.

Attest:

H. D. GORDON.

(Seal)

302 IN THE

CIRCUIT COURT OF THE UNITED STATES.

For the Northern District of Illinois,

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the Will of Robert G. Dun, deceased,	In Equity.
vs.	
Lumbermen's Credit Association, William Clancy and Burton W. Stadden.	

At the City of Washington, in the County of Washington, and District of Columbia, on this twenty-fifth day of October, 1902, at 10 o'clock A. M. of that day, before me Harry D. Gordon, a Notary Public within and for Washington City, Washington County, in the District of Columbia, at the Library of Congress, personally appeared J. Miller Kenyon, Solicitor for Complainants, and Charles O. Loucks, Solicitor for Defendants.

And thereupon the following proceedings were had pursuant to notice and the attendance of counsel.

Complainants called as a witness in their behalf ARTHUR (seal) x CRISFIELD, who being first duly sworn by me, testifies as follows.

Direct Examination.

By Mr. Kenyon.

By Mr. Loucks:

Counsel for the defendants object to having the deposition of this witness taken because no notice has been
303 served upon the counsel for the defendants of the taking of said deposition.

By Mr. Kenyon:—

Q. Mr. Crisfield, please state your full name? A. Arthur Crisfield.

Q. Are you a resident of the District of Columbia? A. I am.

Q. Please state what your position is, if any. A. I have been employed in the Library of Congress since 1855. Since 1887 I have been employed in the copyright division.

Q. What were your duties during the year 1901? A. Part of my duties were to sit at the table where the mail was brought in and to receive the mail and examine the contents of it and to determine what things in my judgment were fit and ready to be copyrighted, that is to assort the good from the evil and to divide them into these two classes.

Q. Did you or did you not receive the mail for the copyright division of the Library of Congress during the year 1901? A. I did receive the mail during that year.

Q. Will you look at the paper I now hand you and state what it is? (Hands witness the paper) A. It is a letter from R. G. Dun and Company and the title page to one of their publications.

Q. To what edition is that the title page? A. (Examines the papers) This is the title page to volume 131, which is a part of the book called The Mercantile Agency Reference Book etc., the January number, I suppose, 1901.

Q. Did you or did you not receive that title in the mail? A. I did.

304 Q. Please state whether there are any marks on that paper to enable you to identify it as having been received by you? A. There are.

Q. What are they? A. The stamp upon it, put there by my own hand.

Q. Will you state the date when it was received? A. (Reads) The title bears the date November 22,

Q. Is that the date of the receipt in this office, the actual receipt? A. Yes, as shown by that stamp.

Q. If it had been received on any other date would it have the date thereon that it now bears?

By Mr. Loucks:

I object to the question as calling for a conclusion of the witness.

By the Witness:—

A. I could not say that, but I should not think it would, as the custom was to stamp it on the date it was received.

Q. Will you state the date which this title was received and bears now? A. (Reads.) November 22, 1900.

Q. Will you state if you know the custom as to the prac-

tice of stamping the mail in this office? A. The mail is received as I have explained to you and when I divide it into the good and the evil classes the date of its receipt is stamped upon it. The date stamped was not put upon it by me in all cases, but in many instances it was done with my own hand. So that all papers received in this office bear the stamp of the date on which they are re-received.

305 Q. Do you know of any deviation from that custom during the year 1901? A. No anterior dates were put upon the mail received. Sometimes, the title page is accompanied with a request from the applicant for copyright that the title should not be entered until some future date and in that case a memorandum is made and the title is not entered until that date. These are the only case where there is any deviation from the usual custom.

Q. Will you read from the title page and state if there was anything there to indicate that this was done in this case? A. (Reads) There was no such request accompanying this title as indicated by the record.

Q. Mr. Crisfield, will you look at the paper I now hand you and state when it was received at the Library of Congress.

By Mr. Loucks:—

Counsel for the defendants object to the question as calling for a conclusion of the witness, it having not been shown that the witness has personal knowledge of the matter inquired about and also because it has not been shown that the paper was received at the Library of Congress.

By the Witness:

A. Examines the paper.) January 24th, 1901.

Q. Is there anything about that paper to enable you to identify it? A. Yes, there is.

Q. What is it? A. The words "Past for Entry" with my initials.

Q. By whom were they put there? A. By myself.

Q. Is the date that you have just read, the date on 306 which that title was actually received. A. The title was actually received in this office January 24th, 1901.

By Mr. Loucks:

I move to strike out the answer of the witness as it has not been shown that the witness has personal knowledge of the matter inquired about.

Q. By Mr. Kenyon.) Will you read the main part of that title and the name by whom deposited?

A. Reads) The Mercantile Agency. Reference Book and Key, containing ratings of Merchants, Manufacturers and Traders generally throughout the United States and Canada. March 1901. Volume 132. R. G. Dun and Company, New York.

Q. Can you state to what edition of Dun and Company's books that refers? A. That refers to the edition of March, 1901, volume 132.

Q. Will you look at the title page I now hand you and tell me the date when it was received?

Hands witness the paper.

By Mr. Loucks:—

I object to the question as it has not been shown that the witness has personal knowledge of the matter inquired about.

A. (reads) May 22nd, 1901.

Q. Is there anything about that title which would enable you to state who received it? A. There is.

Q. What is it? A. The words "Passed for entry" with my initials "A. C."

Q. Is that a stamp which you have? A. It is a stamp which I had at that time.

307 Q. By whom was it impressed on the paper? A. By me, myself.

Q. Will you please state the edition of R. G. Dun and Company's book to which that refers? A. Reads) This refers to July, 1901, volume 133 of The Mercantile Reference Book and key containing ratings etc.

Q. Will the witness please read the page of that title? A. The Mercantile Agency. Reference Book and key containing ratings of Merchants, Manufacturers and Traders generally throughout the United States and Canada. July 1901. Vol. 133.

Q. Have you just read from the title page? A. Yes, I have just read the title page.

Q. Will you look at the paper I now hand you and state the date when it was received in the Library of Congress?

By Mr. Loucks:—

Object to the question as calling for a conclusion of the witness and because it has not been shown that the witness has personal knowledge of the matter inquired about.

By the witness:—

A. Reads) August 5th, 1901.

Q. Is there anything on that paper to enable you to identify it as received by you or any other person? A. Examines the papers. This paper was not received by me personally. I can identify it as having been received August 5th, from the date stamped thereon. The initials thereon are not mine.

Q. If that paper had been received on any other day would it have borne that date. A. According to the custom
308 of this office, the stamp was put on the paper the very day it was received and it would bear that date, the date it was actually received in this office.

Q. Will you please state, reading from the title you now have, to what edition that refers. A. Reading) This refers to the September publication, 1901, volume 134 of The Mercantile Agency Reference Book and Key containing ratings of Merchants, Manufacturers and Traders Generally throughout the United States and Canada.

Q. By whom was that published? A. By R. G. Dun and Company, New York. (Reads)

Cross Examination.

By Mr. Loucks:—

Q. Have you any personal independent recollection of the dates when these titles were received. A. No recollection independent of my stamp.

Q. You stated that your initials were affixed to some of the papers? A. Yes.

Q. Are those initials in your own handwriting? A. No.

Q. How are they made? A. They are made with a stamp which is in my possession and kept by me. It is my private stamp.

Q. That title page which you say was not received by you, what stamp does that bear? A. The words "Passed for Entry" and the initials "B. F. T."

Q. Did you affix the date stamped upon the page about
309 which you are now testifying. A. No. It was done by some one else whose initials are those stamped on the title page.

ARTHUR CRISFIELD.

Attest.

H. D. GORDON.

(Seal)

of C. rady. 310

IN THE

CIRCUIT COURT OF THE UNITED STATES.

For the Northern District of Illinois,

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the Will of Robert G. Dun, deceased,

vs.

Lumbermen's Credit Association, William Clancy and Burton W. Stadden.

} In Equity.

At the City of Washington, in the County of Washington, and District of Columbia, on this twenty-fifth day of October, 1902, at 10 o'clock, A. M. of said day, before me, Harry D. Gordon, a Notary Public within and for Washington City, Washington County, in the District of Columbia, at the Library of Congress, personally appeared J. Miller Kenyon, Solicitor for Complainants and Charles O. Loucks, Solicitor for Defendants.

And thereupon the following proceedings were had pursuant to notice and the attendance of counsel.

Complainants called as a witness in their behalf C. (seal) x POWELL GRADY, who being first duly sworn by me, testifies as follows:

Direct Examination by Mr. Kenyon.

By Mr. Loucks:

Counsel for the defendants object to having the deposi-
311 tion of this witness taken because no notice of the taking of the deposition of this witness has been served upon the counsel for the defendants.

By Mr. Kenyon.

Q. Your full name is what? A. C. Powell Grady.

Q. Are you a resident of the District of Columbia? A. Yes.

Q. What, if any position, do you occupy in the Library of Congress? A. I am a clerk in the copyright division.

Q. Will you please state briefly what his duties are under that position? A. My duties are to receive the moneyed applications, crediting the money on the application and recording it in the cash book.

Q. Were you employed in the Library of Congress during the year 1901? A. I was.

Q. What were your duties during that year? A. They were the same as indicated, receiving the moneyed applications and recording the same in the cash book.

Q. Will you look at the paper I now hand you and state what it is? (Hands witness the paper) A. It is an application from R. G. Dun and Company for recording of the title.

Q. Read the title? A. Reads) The Mercantile Agency. Reference Book (and Key) containing ratings of Merchants, Manufacturers and Traders generally throughout the United States and Canada.

Q. Is there any name on that page to indicate by 312 whom it was deposited? A. Yes.

Q. Who was it. A. Reads) R. G. Dun and Company, New York.

Q. For which edition was that title deposited? A. Reads) January, 1901, volume 131.

Q. On what date, Mr. Grady, was that title actually received in the Library of Congress?

By Mr. Loucks:—

I object to the question because it has not been shown that the witness has personal knowledge of the matter inquired about.

By the witness:—

A. Reads) It is stamped November 22, 1900 which shows that it was received by me and recorded on the book of that day.

Q. You personally received it and recorded it? A. I personally received it and recorded it on that date, November 22, 1900.

Q. Will you look at the title I now hand you and state what it is? A. (Witness examines the paper handed him). It it an application for copyright entry from R. G. Dun and Company of New York.

Q. Will you state for what edition? A. Reads) March 1901, volume 132.

of C. Grady.

Q. Does that bear any date besides of the date which the writers put there? A. It does.

Q. Will you please state what date that title bears
313 when it was actually received in the Library of Congress?

By Mr. Loucks:

I object as it has not been shown that the witness has personal knowledge of the matter inquired about.

By the witness:—

A. It was received by me, January 24th, 1901 and so recorded in the record cash boook, remittance number 71 of that date.

Q. Will you look at the paper I now hand you and state what it is? (hands witness the paper) A. Application for copyright entry from R. G. Dun and Company of New York.

Q. For what edition? A. Reads) Edition of July, 1901, volume 133.

Q. Is the title entry similar excepting as to the date to this about which you have just testified? A. They are similar.

Q. Will you please state, if you can of your own personal knowledge, the date that that title was actually received in the Library of Congress, Copyright Division. A. It was received by me, May 22nd, 1901 and was recorded in my record book.

Q. Mr. Grady, please look at the paper I now hand you and state what it is? (Hands witness the paper.) A. It is an application for copyright entry from R. G. Dun and Company of New York.

Q. Will you state the edition for which this is? A. The edition for September 1901, volume 134.

Q. Is the title entry similar to those about which
314 you have testifying excepting as to the date? A. It is.

Q. Will you please state of your own personal knowledge what date that title was received in the Library of Congress office of the Register of Copyrights? A. It was received by me on August 5th, 1901, being remittance number 81 on my record book. (Refers to Book).

Mr. Loucks.

"No cross-examination."

Attest: C. Powell Grady.

H. D. Gordon.

(Seal)

315 IN THE

CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Northen Division.

Mary B. Dun, Robert Dun Douglas, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the Will of Robert G. Dun, deceased,	In Equity.
vs.	
Lumbermen's Credit Association, William Clancy and Burton W. Stadden.	

At the City of Washington, in the county of Washington, and District of Columbia, on this twenty-fifth day of October 1902, at 10 o'clock, A. M. of said day, before me, Harry D. Gordon, a Notary Public within and for Washington City, Washington County, in the District of Columbia, at the Library of Congress, personally appeared J. Miller Kenyon, Solicitor for Complainants, and Charles O. Loucks, Solicitor for Defendants.

And thereupon the following proceedings were had pursuant to notice and the attendance of counsel.

Complainants called as a witness in their behalf FREDERICK (seal) x WILLIAM ASHLEY, who being by me first duly sworn, testified as follows:—

By Mr. Loucks:—

Counsel for the defendants object to the taking of the deposition of this witness because no notice of the taking of such deposition has been served upon the coun-
316 sel for the defendants.

Direct Examination.

By Mr. Kenyon:

Q. Will you please state your full name? A. Frederick William Ashley.

Q. Are you a resident of the District of Columbia? A. I am.

n of
k Will-
hley.

Q. What is your employment, if any, at the present time? A. I am employed in the Copyright Division of the Library of Congress.

Q. How long have you been so employed? A. Since the 9th day of May, 1900.

Q. Were you then in that employ during the year 1901? A. Yes, I was.

Q. Mr. Ashley, will you be kind enough to look at this book and state what it is, if you know? A. This book is a copy of The Mercantile Agency Reference Book and Key containing ratings of Merchants, Manufacturers and Traders generally throughout the United States and Canada.

(Witness reading from the book handed him.)

Q. By whom is it published? A. By R. G. Dun and Company of New York, N. Y.

Q. What edition is this about which you are testifying? A. Reads) January, 1901, volume 131.

Q. Mr. Ashley, will you please state of your own personal knowledge what date that book was received in the Library of Congress, Copyright Division?

By Mr. Loucks:—

I object to the question because it has not been shown 317 that the witness has any personal knowledge in regard to the matter inquired about.

A. Reads) This copy was received on December 22, 1900.

Q. Was it received by you? A. I cannot state that it was received by me personally.

Q. During the time that that book was received in the office whose duty was it to receive them? A. All mail for the Library is received by the Mail and Supply Division.

Q. Were you connected with that division? A. No, sir, I was not. The mail and supply division then send all the papers coming to the library to the division for which they are intended.

Q. When the books are received in your division are they marked as having been received there?

By Mr. Loucks:—

I object to the question as it has not been shown that the witness has personal knowledge of the matter inquired about.

By the witness:

A. The custom is to stamp on the last page of the book the day it is received in this Department.

Q. That it the date of the actual receipt in the Library of Congress. A. The date it was received in the Copyright Division.

Q. During the year 1901 do you know of any instance where there has been a variation of that custom? A. No, sir.

Q. Will you please look at the book I now hand you and state what it is. (Hands witness the book.) A. This is
318 a copy of the R. G. Dun and Company Reference Book, March 1901, volume 132.

Q. Will you state of your own personal knowledge when this book was actually received in the Library of Congress?

By Mr. Loucks:—

I object to the question as calling for a conclusion of the witness, it not having been shown that he has any personal knowledge of the matter inquired about.

A. This Copy (reads) was received February 25th, 1901.

Q. Can you state what edition that is? A. Reads) This is the edition for March, 1901, volume 132.

Q. Please look at the book I now hand you and state what it is. Hands witness the book.) A. Reads) Copy of the R. G. Dun and Company, Mercantile Agency. Reference Book for July, 1901, volume 133.

Q. State from your own personal knowledge the date when that book was actually received in the Library of Congress, Copyright Division.

By Mr. Loucks:—

I object to the question because it has not been shown that the witness has personal knowledge of the matter inquired about and as calling for an conclusion of the witness.

A. Reads) This copy was received June 27th, 1901.

Q. Please look at the book I now hand you and state what it is? (Hands witness the book.) A. Reads) Copy of R. G. Dun and Company, Mercantile Agency Reference Book for September 1901. Volume 134.

Q. Will you please state of your own personal knowledge what date that book was received in the Library of Congress, Copyright Division?

By Mr. Loucks:—

319 I object to the question as calling for a conclusion of the witness and because it has not been shown that the witness has personal knowledge of the matter inquired about.

of
k Will-
ley.

By the witness:—

A. Reads) This copy was received at the copyright office on August 27th, 1901.

Cross Examination.

By Mr. Loucks:—

A. When you answered these questions as to the dates of —receipts of the various books, you were reading them from the books were you not? A. Yes.

Q. You have no personal, independent recollection, have you, of the date when these books were received? A. No.

Q. Were these date stamps affixed by you? A. No.

Q. Did you make any mark upon any of the books by which you can identify them at this time? A. I made no marks on the books.

Re-Direct Examination.

By Mr. Kenyon:—

Q. These dates about which you have just testified, were not printed there, were they? A. They are stamped with a rubber dating stamp.

Q. Where is that stamping done? A. The stamping 320 in this particular instance was done in the Mail and Supply Division of the Library of Congress and the room occupied by that division is the one near the east door of the Library Building.

Re-Cross Examination.

By Mr. Loucks:—

Q. Did you see the stamp affixed? A. I did not.

Q. You did not see the stamp affixed to any of these books? A. No, sir.

FRED'K W. ASHLEY.

Attest.

H. D. GORDON.

321 United States of America
District of Columbia } ss.
City of Woshington.

I, Harry D. Gordon, a Notary Public within and for Washington City, Washington County, in the District of Columbia, do hereby certify that the reason for taking the foregoing depositions is, and the fact is that the testimony of the said witnesses is material and necessary for the complainants in the cause in the caption of the said depositions mentioned, and that the said witnesses and each of them, lives, and at the time of the taking of the said depositions did live at Washington City, in the County of Washington and District of Columbia, more than one hundred miles (100) from the City of Chicago, in the County of Cook and State of Illinois, where the Court at which said cause is to be tried was appointed by law to be held. Certificate

I further certify that notification of the time and place of the taking of the said depositions made and signed by the solicitors for the complainants was duly served on the solicitors for the defendants, to be present at the taking of the said depositions and to put interrogatories to the said witnesses if they might think fit.

I further certify that on the twenty-fifth day of October, 1902, I was attended at the place named in the said notification for the taking of the said depositions, by J. Miller Kenyon, solicitor for the complainants and Charles O. Loucks, solicitor for the defendants and also by the witnesses, Thorvald Solberg, Arthur Crisfield, C. Powell Grady and Frederick William Ashley, who were of sound mind and
322 lawful age; and the said witnesses were and each of them was by me carefully examined, cautioned and sworn to testify to the truth, the whole truth and nothing but the truth; that the said depositions were taken down in shorthand by A. L. Minick, a stenographer and by her reduced to typewriting under my personal supervision; that after carefully reading the same to the said witnesses they and each of them subscribed the same in my presence; that I retained the said depositions in my possession for the purpose of sealing and directing the same with this certificate of the reasons aforesaid for taking the said depositions, with my own hand to the court for which the same were taken.

And I do further certify that I am not of counsel or attorney for either of the parties in the said depositions and

caption named, or in any way interested in the event of the said cause in the said caption named.

In Witness Whereof I have hereunto set my hand and affixed my Notarial seal this 29th Day of October, in the year of our Lord, One thousand Nine Hundred and Two.

HARRY D. GORDON.
(Seal) *Notary Public. D. C.*

(Endorsed) Received and filed Nov., 3, 1902 Opened at Request of Compts' Solr. Marshall E. Sampsell, Clerk.

323 DEPOSITION OF PHILIP H. MARQUARD. ET AL.

IN THE
CIRCUIT COURT OF THE UNITED STATES,
For the Northern District of Illinois,
Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the Will of Robert G. Dun, deceased,	In Equity.
vs.	
Lumbermen's Credit Association, William C. Clancy and Burton W. Stadden	

Notice for taking depositions.

To Messrs. Atwood & Pease, Defendants' Solicitors.
Gentlemen:—

Please take notice that on the 28th day of October 1902 at one o'clock P. M. before Frank Strauss, Notary Public, or in case of his absence or inability to act, before some other competent officer duly authorized under the statutes so to act, at the office of Weed & Miller, 404 Century Building, No. 197 Superior Street in the City of Cleveland in the County of Cuyahoga, we shall take the depositions of the following witnesses who reside more than one hundred miles from the place of trial in the above entitled cause, to-wit: Phil H. Marquard, F. B. Cattrall, Frank H. Do..as, and others. The examination of the said witnesses will continue from day to day until completed. The said depositions will be read in evi-

dence on the part of the complainants on the trial of the said cause.

324 You are invited to attend and cross examine if you so desire.

HOYNE, O'CONNOR & HOYNE,
OFFIELD, TOWLE & LINTHICUM,
Solicitors for complainants.

Chicago, October 13th 1902.

Recd. a copy of the within notice is hereby acknowledged by the receipt of a copy thereof this 13th day of October A. D. 1902.

ATWOOD & PEASE,
Solicitors for Defendants.

325 IN THE CIRCUIT COURT OF THE UNITED STATES

Dor the Northern District of Illinois

Northern Division.

Mary B. Dun, Robert Dun, Douglas, Francis L. Hinton and Walter D. Buchanan, executors and trustees under the will of Robert G. Dun, deceased.	In Equity.
—*vs*—	
Lumbermen's Credit Association William Clancy and Burton W. Stadden.	

At the City of Cleveland, in the County of Cuyahoga and State of Ohio, on this 28th day of October, 1902, at one o'clock P. M. of said day, before me Frank Straus, a Notary Public within and for Cuyahoga County in the State of Ohio, at the office of Weed & Miller room 404 Century Building, personally appeared Weed & Miller, solicitors for complainants, and C. O. Locks, solicitor for defendants.

And thereupon the following proceedings were had pursuant to notice and the attendance of counsel.

Complainants called as a witness on their behalf, PHILIP H. MARQUARD, who being first duly sworn by me testified as follows:

Direct Examination by Mr. Miller.

Q. State your name, age residence and occupation. A.

f Mar- Philip H. Marquard, aged thirty-four years, 217 Taylor St., Interior finishing and door and sash work.

326 Q. Please spell your last name? A. M-a-r-q-u-a-r-d.

Q. Under what name or style do you conduct your business in the City of Cleveland? A. The Marquard Sash & Door Manufacturing Co.

Q. How long have you so conducted your business under that style? A. About five years.

Q. Are you familiar with the names of the other parties, firms or corporations engaged in the lumber and lumber finishing business in the city of Cleveland? A. Yes sir.

Q. Is there any other individual, firm or corporation engaged in the lumber finishing business in the city of Cleveland under the name or style similar to that of yours, that you know of? A. There is no other that I know of.

Q. For how many years have you been familiar with the lumber finishing trade in the city of Cleveland? A. About five years.

Q. You may state, if you know, whether or not there is any other person, firm or corporation other than yourself doing business in the city of Cleveland under the name and style of the Marquard Sash & Door Manufacturing Co. A. I do not know of any.

Q. Have you any knowledge of any person, partnership or corporation having conducted business in the City of

327 Cleveland within the last five years under the style and name of The Marquardt Sash & Door Manufacturing Co. A. No there is none that I know of.

Q. If there have been have you the means of knowing that fact?

(Objected to as calling for a conclusion of the witness)

A: Yes, I would have known it. There might have been that I would not have known of.

Q. Is the Marquard Sash & Door Manufacturing Co. a corporation? A. No sir. I am the sole owner and conduct the business under that style.

Q. Have you any knowledge of the Lumbermen's Credit Association? A. I know that there is such an association and I have seen their books.

Q. What if any reports have you made to them during the last five years of your financial standing? A. I don't remember of their ever being to see me. They might have been.

Q. Are you or are you not a subscriber for their books? A. I am not.

Q. Have you any recollection of having made a report to the Lumbermen's Credit Association of your financial condition within the last five years? A. I think I have.

Q. Are you able to state about what time it was? A. No, I could not state that.

Cross-Examination by Mr. Loucks.

Q. Mr. Marquard have you ever received any mail in which your name has been mispelled in any way. A.
328 That has often happened.

Q. How has your name been mispelled. A. In many different ways. Some 'dt' and in so many different ways I couldn't tell you.

Q. Has it frequently been mispelled so as to read M-a-r-q-u-a-r-d-t? A. Not of late. There was mail came out of this office yesterday spelled 'dt', I noticed that.

Q. From which office? A. The notary's office.

Q. The Notary in this case? A. Yes.

Q. Has your name been mispelled in that way at any other time within the last five years? A. In regard to that we open up the mail and we never notice the spelling of the name.

Q. If a letter comes to your office in which your names is spelled M-a-r-q-u-a-r-d-t is it not your custom to open it? A. Yes sir.

Q. What does this book which I now hand you purport to be? A. The City Directory, of Cleveland for the year 1901.

Q. Will you kindly count the number of names appearing in that directory in which the spelling is the same as your own? and state how many there are?

(Question objected to as incompetent and irrelevent, the Directory itself being the best evidence of its contents, the same having been properly identified.

329 A. There are twenty-seven as I count, there may be more. Twenty-eight I now count, I guess that is right.

(The answer objected to)

A. Will you kindly count the number of names appearing in said directory spelled M-a-r-q-u-a-r-d-t and state how many there are

(Same objection as to next preceding question.

Mar- A. Thirty-seven.

(Move to have answer stricken out, being irrelevant and immaterial.

Re-direct by Mr. Miller.

Q. Mr. Marquard, has it ever happened to you during the five or more years in which you have been in this business that you have mispelled your name? A. No sir.

Q. So that if you gave a report or sent a communication to the Lumbermen's Credit Association you would have spelled your name correctly. A. Yes sir.

Q. And it would not appear spelled M-a-r-q-u-a-r-d-t

(Object to the question becaues the witness might have given a verbal report.

A. No sir.

Q. If you gave a report of your financial condition to this company was it verbal or written? A. I think it was verbal.

Q. Have you ever had any dealings of any kind with 330 the Lumbermen's Credit Association, and if so of what nature and when? A. I think about two years ago one of the agents of the Lumbermen's Credit Association had been down trying to sell me a book. I would not say positively that it was The Lumbermen's Credit Association. It was a red book and I think there is another red book in this city but I am not sure about it. They both tried to sell them to me.

Q. Was that the first time you had dealings with the Lumbermens Credit Association Directory? A. I think it was.

Q. Do you know whether there is any other person in this city now or was during the past five years besides yourself by the name of Philip H. Marquard spelled either with the final 'd' or 'dt' A. No sir there is not, that I know of.

Re-cross by Mr. Loucks.

Q. Do you remember of ever having made a report as to your financial condition to R. G. Dun & Co? A. I think I have.

PHIL H. MARQUARD.

331 Complainants also called as a witness on their behalf, FRANK R. CATTRALL, who being first duly sworn by me, testified as follows:—

Direct Examination by Mr. Miller.

Q. State your name, age, residence and occupation. A. Frank B. Cattrall, thirty-eight years, Cleveland, Ohio, with R. G. Dun & Co.,

Q. How long have you been employed by R. G. Dun & Co. A. For about twenty-one years.

Q. What department of the business of R. G. Dun & Co. in the City of Cleveland do you now have charge of? A. I have been in various departments from reporter to chief clerk, handling all city information.

Q. Were you so employed at and prior to July 1898? A. I was.

Q. You may state, if you can, when the name of the Marquardt Sash & Door Manufacturing Co. first appeared in that form in the records of R. G. Dun & Co.?

(Objected to because the records spek for Themselves.

A. First reported March 20, 1898, but not under that style. The Report was written under the style of Marquard Sash & Door Manufacturing Co.

Q. Was, or was not that prior in date to the publication of the July book of R. G. Dun & Co., 1898. A. It was.

Q. How did the name appear in the July book of R. G. Dun & Co., of 1898.

332 (Objected to as the book speaks for itself.

A. It appeared as Marquardt, M-a-r-q-u-a-r-d-t Sash & Door Manufacturing Co.

Q. Please explain how that came about?

(Objected to because it is not shown that the witness has personal knowledge

A. At that time, that is in March 1898, I had charge of the office city change book in which all changes and new firms reported are inserted and afterwards transferred to what is known as the Printers Change book, and it was a clerical error on my part in misspelling the name, or copying the name from the report. Hence it appeared in the July reference book as Marquardt instead of Marquard, and subsequent reports made on the concern were passed through without any correction being made in spelling the name.

Q. How long, if you know, did the name appear in subsequent publications of R. G. Dun & Co. misspelled.

(Object to the question because the publications speak for themselves.

A. The name continued misspelled in all publications up until a recent edition.

Q. Who first, if anybody, called your attention to the mistaken spelling of the name? A. It was one our reporters named Thomas Hayes who called my attention to the misspelling of the name in the reference book. This, I think, was in July or August last.

Q. In your relation to the business of R. G. Dun & Co. and in particular to the management of the local reporting department, have you an opportunity to become familiar
333 with name of the various local commercial and manufacturing establishments? A. I have.

Q. I will ask you to state, if you know, whether there has been any person, firm or corporation doing business in the City of Cleveland during the last five years under the style or name of The Marquardt Sash & Door Manufacturing Co.? A. I have no knowledge of such.

Q. If there had been would you be likely to have known it?

(Question objected to as calling for a conclusion of the witness.

A. If it had been reported I certainly would have known of it.

Q. You have previously referred to your office records of the Marquard Sash & Door Manufacturing Co. will you kindly cause copies thereof to be made and compared by the Notary taking this deposition with the original so that the same may be attached to this deposition?

A. I will.

(The same are attached to and made part hereof, (marked "Exhibit A".) Frank Strauss, Notary Public.

Defts. object to the introduction of such documents or the attachment of the same to the deposition because sufficient foundation has not been made for their introduction or attachment.

Cross-Examination by Mr. Loucks.

Q. What does this book which I now hand you purport to be?

(Question objected to as incompetent and irrelevant.

A. That is the Cleveland City Directory of 1901.

Q. I will ask you to please count the names in that directory spelled M-a-r-q-u-a-r-d and tell me how many there are.

(Objected to previous question repeated.

334 A. Twenty-eight.

Q. I will ask you to count the number of names appearing in that directory spelled M-a-r-q-u-a-r-d-t.

(Objection repeated.

A. Thirty-seven.

Q. How often do you revise your city reports? A. Why we calculate to do it about every six months, and sometimes oftener should occasion arise for us doing so.

Q. How then did it happen that the mistake in this case escaped your observation from July 1898 until July 1902, when your attention was called to the same, being a period of four years? A. For no other reason than simply a pure case of oversight. The mistake being entirely with the one letter and not readily observed.

Re-direct Examination by Mr. Miller.

Q. How is the name of the Marquard Sash & Door Manufacturing Co. spelled in the Cleveland City Directory of 1901? A. The same as our reports on record, Marquard Sash & Door Manufacturing Co.

(I move that the answer be stricken out as not responsive and as being irrelevant.

Q. Please examine the Cleveland City Directory of 1898 and state how you find the Marquard Sash & Door Manufacturing Co. is therein spelled? A. M-a-r-q-u-a-r-d Sash & Door Manufacturing Co.

Q. Please examine the Cleveland City Directory as
335 1898 and state how you find the name of the Marquard Sash & Door Manufacturing Co. therein spelled? A. M-a-r-q-u-a-r-d Sash & Door Manufacturing Co.

FRANK B. CATTRALL.

R. G. 336

EXHIBIT A.

I certify that this exhibit was produced by the witness Frank B. Cottrell and attached to his deposition by me,

FRANK STRAUS,
N. P.

Cleveland, Ohio,
Cuyahoga Co.

Marquard, Sash & Door Mfg. Co.—Not Inc.
176 Canal St.

7-1200—March 20-1898—Phil H. Marquard claims to be sole proprietor of this business. He recently started here, had been previously in the employ of others in same line of trade. His machinery he values at $3,000, which he states is all paid for, and to have in stock, &c. about $1,000. He purchased his machinery from the Interior Decorating Co. who failed here, and his estimate of its value is thought to be somewhat high. He is a young unmarried man of good character and habits and where known is well regarded. He will do work principally for A. Teachout & Co. He is believed worth net about $3,000, and for any moderate accommodation is looked upon as safe.

J. 3½
Rev.

Cleveland, Ohio,
Cuyahoga Co.

Marquard, Sash & Door Mfg. Co.
172 to 6 Canal St.

10-1200—Nov. 11-1898,; Phil H. Marquard sole Propr. He makes the following statement:—

Stock on hand averages $2,000
Machinery $5,000

Total assets $7,000

Have practically no debts. Pay everything on the 10th of each month, and have no borrowed money. His estimate of his machinery is considered rather high, for about a year ago he only called it worth $3,000. He does work principally for A. Teachout & Co. discounts his bills, and is understood to be making money. He is a young unmarried man of good character and habits, is industrious and has good prospects of success. Is estimated worth $3,000 to $4,0000 net.

J. 3½ to H 3½.

Cleveland, Ohio,
Cuyahoga Co.

Exhibit
Dun's
record

Marquard Sash & Door Mfg. Co. Not Inc.
176 Canal St.
July 3—1899. Phil H. Marquard, Propr.

He is said doing as well as when previously reported, and is thought to be adding some to his means right along. He is well regarded here, is reported to take care of his obligations promptly and considered entitled to any ordinary credit.

H 3½

Cleveland, Ohio,
Cuyahoga Co.

Marquard Sash & Door Mnfg. Co. Not Inc.
176 Canal St.
1200—20—Feb. 5, 1900. Phil H. Marquard, Sole Proprietor.

Is a young unmarried man of good character and habits, industrious and attentive to business, principally, does work for A. Teachout & Co. Is estimated worth from $3,000 to $4,000. invested in stock on hand and machinery, not doing a very heavy trade but is keeping moderately busy. Is reported prompt pay and considered worthy of credit to a moderate extent.

H 3½

Cleveland, Ohio,
Cuyahoga Co.

Marquard Sash & Door Co. Not Inc.

Aug. 3—1900. 1200—25. Mr. Marquard continues to carry on the above business. His produce is principally taken by one concern here. He states that he always discounts his bills and the trade here interviewed states that he always pays his obligations to them in a perfectly satisfactory manner. It is thought he is a fair risk for any reasonable amount.

H 3½

337 Cleveland, Ohio,
Cuyahoga Co.

Marquard Sash & Door Mnfg. Co. Not Inc.
7—1200—Sept 24, 1900.

Phil H. Marquard doing business under above style suffered a loss by fire early this morning. He is reported to have an insurance of $7,000 which is said to be hardly sufficient to cover loss sustained

H 3½

—R. G. Co.'s

Cleveland, Ohio,
Cuyahoga Co.

Marquard Sash & Door Mnfg. Co. Not Inc.

23—1200—Oct. 29, 1900—#176 Canal St. Phil H. Marquard conducts this business under the above style. Is a young unmarried man of good personal reputation and habits engaged in th[illegible]ine since the spring of 1898. Declined to make a stat[illegible]nent when called upon, but from information gained in other quarters he is estimated worth in the neighborhood of $4,000. He is said to have sustained a loss by fire on Sept. 24, having had his machinery &c fully insured and is now continuing business as formerly. Trade investigation reports him prompt in meeting his bills and a fair risk for moderate credit favors.

H 3½

Cleveland, Ohio,
Cuyahoga Co.

Marquard Sash & Door Mnfg. Co.

16—1200. July 9—1901.—#174 & 176 Canal St. Mr. Phil H. Marquard is still sole proprietor of this business and so far as learned there is no material change in his affairs since previous full report. He is said to be doing a fair business, thought to be fully holding his own, and so far as known his obligations are met in a satisfactory manner. He is a man of good local standing attends closely to his affairs, and sustains former credit and standing.

H 3½

Cleveland, Ohio
Cuyahoga Co.

Marquard Sash & Door Mnfg. Co. Not Inc.
Phil H. Marquard, Sole Propr.

Cond. 17—July 9th, 1901. He is comparatively a young man, is of good reputation as to character and habits, and had obtained a knowledge of this business prior to embarking for himself about Jany. '98. At the time of commencing he claimed an investment of $4,000 mostly consisting of assets purchased from the trsutees of a defunct concern. Has since declined statements. His business was considerably damaged by fire in Sept. 1900, but insurance fully covered the loss By those closely in touch with his affairs, he
338 is believed to be worth net about $4,000 represented by a safe and clear equity in the business, nothing outside. He does work principally for a good local concern, does not

take much chance in crediting and where buying right along is reported prompt and satisfactory *in paying his bills.*
For current demands he is regarded good.
H 3½

Exhibit A (page 2)

339 Exhibit A Page 3.

Please note if Name, Business and Address correspond with your inquiry.

Cleveland, Ohio,
Cuyahoga Co.

Marquard Sash & Door Mnfg. Co.

16—1200—Feb. 6, 1902. Mr. Phillip H. Marquard is still sole proprietor of this business, and information contained in our previous full report is considered applicable at this time.

He is said to be doing a fair business, believed to be fully holding his own, and the trade here report his account a satisfactory one. He is a man of good reputation, attends closely to his affairs and sustains former credit and standing.
H 3½

340 United States of America, }
Northern District of Ohio, }

State of Ohio, }
Cuyahoga County, } ss:

I, Frank Strauss, a Notary Public, within and for Cuyahoga County, in the State of Ohio, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the testimony of the said witnesses is material and necessary for the complainant in the cause in the caption of the said deposition mentioned, and that the said witnesses and each of themm live, and at the time of the taking of the said depositions, did live at Cleveland, in the County of Cuyahoga, and State of Ohio, more than one hundred miles from the City of Chicago, in the County of Cook and State of Illinois, where the court at which said cause is to be tried was appointed by law to be held.

I further certify that the notification of the time and place of the taking of the said depositions made and signed by the solicitors for the complainants was duly served on the solicitors for the defendants, to be present at the taking of the said depositions and to put interrogatories to the said witnesses if they might think fit.

I further certify that on the 28th day of October, 1902, I was attended at the place named in the said notification for the taking of the said depositions, by Weed & Miller, 341 solicitors for the complainants, and by Charles O. Loucks, solicitor for the defendants, and also by the witnesses Philip H. Marquard and Frank B. Cattrall, who were of sound mind and lawful age; and the said witnesses were and each of them was by me carefully examined, cautioned and sworn to testify to the truth, the whole truth and nothing but the truth; that the said depositions were reduced to typewriting under my personal supervision in the presence of the witness, by Miss May E. Strauss, that after carefully reading the same to the said witnesses, they and each of them subscribed the same in my presence; that I retained the said depositions in my possession for the purpose of sealing and directing the same with this certificate of the reasons aforesaid for taking the said depositions, with my own hand to the court for which the same were taken.

And I do further certify that I am not of counsel or attorney for either of the parties in the said depositions and caption named, or in any way interested in the event of the said cause in the said caption named.

In Witness Whereof I have hereunto set my hand and affixed my notarial seal, this 28th day of October, in the year of our Lord, One Thousand Nine hundred and Two.

FRANK STRAUS,
Notary Public.

(Seal)

Cost Bill.

Paid witness fees	$1.60
" constable (subpoena)	1.00
Cost of deposition and two (carbon copies	9.00
	$11.60

Recd. $11.60 of Plaintiffs.

FRANK STRAUS.

342 The State of Ohio, }
Cuyahoga County } ss.

I, William R. Coates, Clerk of the Court of Common Pleas, a Court of record of Cuyahoga County aforesaid, do hereby certify that Frank Straus before whom the annexed acknowledgment was taken, was at the date thereof a Notary Public, in and for said County, duly authorized by the laws of Ohio to take the same, also to take acknowledgments and proofs of deeds or conveyances for land, tenements or hereditaments situated and lying in said State of Ohio, and further that I am well acquainted with his handwriting and believe his signature thereto is genuine; and that the annexed instrument is executed according to the laws of the State of Ohio. Certificate clerk.

Commission expires Sept. 17, 1905.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court at Cleveland, this 1 day of Nov. A. D. 1902.

WILLIAM R. COATES,
Clerk'

(Seal)

No. 4828.

(Endorsed) Received and Filed Nov. 3, 1902. Marshall E. Sampsell, Clerk.

343 In the Circuit Court of the United States,

For the Northern District of Illinois—

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and trustees under the will of Robert G. Dun, deceased,

vs.

Lumbermen's Credit Association, William C. Clancy and Burton W. Stadden,

In Equity.
Notice for taking of Depositions.

To Messrs. Atwood & Pease,
Defendants' Solicitors.

Gentlemen:—

Please take notice that on the 1st day of November, 1902, at nine o'clock A. M. before Charles T. Parker, Notary Public, or in case of his absence or inability to act, before some other competent officer duly authorized under the statutes so to act, at the office of said Parker, in the Borrey Block Cor. of Main & Washington Sts. in the city of Fairmount in the County of Grant and State of Indiana we shall take the depositions of the following witnesses who reside more than one hundred miles from the place of trial in the above entitled cause to-wit: Julian L. Swaim, and others. The examination of the said witnesses will continue from day to day until completed. The said depositions will be read in evidence on the part of the complainants on the trial of the said cause. You are invited to attend and cross examine if you so desire.

Hoyne, O'Connor & Hoyne,
Offield, Towle & Linthicum,
Solicitors for Complainants.

Dated, October 21st, 1902.

Received copy of the within notice this 21st day of October, A. D. 1902.

Atwood and Pease.
Solicitors for Defendants.

344 IN THE CIRCUIT COURT OF THE UNITED STATES, Deposi Julia

For the Northern District of Illinois—

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton, and Walter D. Buchanan, executors and Trustees under the will of Robert G. Dun, deceased	In Equity.
vs.	
Lumbermen's Credit Association, William Clancy and Burton W. Stadden	

At Fairmount in the County of Grant and State of Indiana on this first day of November 1902, at 10 o'clock A. M. of said day, before me Chas. T. Parker, a Notary Public within and for Grant County in the State of Indiana, Fairmount at Law office Chas. T. Parker Borrey Block appeared Ethan A. Huffman and Geo. G. Wharton solicitors for complainants and Chas. O. Loucks, solicitors for Defendants.

And thereupon the following proceedings were had pursuant to notice and the attendance of counsel.

Complainants called as a witness in their behalf JULIAN L. SWAIM, who being first duly sworn by me, testified as follows:

345 *Examination by Mr. Huffman.*

Ques. 1. State your name and residence? Ans. Julian L. Swaim. 49 yrs. old. Residence Fairmount, Indiana.

Ques 2. How long have you lived in Fairmount? Ans. 20 yrs.

Ques 3. What business are you engaged in at present? Ans. In the lumber business.

Ques 4. How long have you been engaged in the lumber business at Fairmount, Indiana? Ans. 18 yrs.

Ques 5. Who, if anybody, was associated with you in the lumber business at Fairmount, Indiana from the fall of 1896 until Aug. 1901? Ans. W. H. Lindsey.

Ques 6. State what was the firm name under which you

of Swaim. did business while associated with Mr. Lindsey? Ans. Lindsey & Swaim.

Ques 7. What business was the firm of Lindsey & Swaim engaged in during the time of existence of such firm? Ans. Retail Lumber business.

Ques 8. State whether or not you were ever in partnership in the lumber business at Fairmount, Indiana, with a person whose name was spelled "Lindsay"? Ans. I don't believe I can answer that question. Some people spell it one way and some the other.

Ques 9. Do you know how he spells it? Ans. I do not.

Ques 10. State whether or not the firm name was ever used by the firm in any of their printed matter or correspondence as "Lindsay & Swain" or ("Lindsay & Swaim"?

(Counsel for defendants objects to the question because it calls for a conclusion of the witness because the correspondence and other documents are the best evi-
346 dence and because it has not been shown that the witness has personal knowledge of the matter inquired about)

Ans. I hardly know how to answer that. We always used the name is "Lindsey and Swaim" in our printed matter.

Ques. 11. You may state whether or not during the time you have been in the lumber business at Fairmount, Indiana, there has ever been to your knowledge any person by name of "Lindsey" or "Lindsay" engaged in the lumber business at Fairmount, Indiana other than the W. H. Lindsey who was your partner and a member of the firm of "Lindsey & Swaim"? Ans. No. Not to my knowledge.

Ques. 12. State whether or not during the time you have been in the lumber business at Fairmount, Indiana, there has ever to your knowledge been engaged in the lumber business at Fairmount, Indiana, any person by the name of "Swain"? Ans. No.

Ques. 13. I hand you a paper marked "Exhibit A" and ask you to state what the same is and to have the same attached to and made a part of your deposition. Ans. This is a statement head of Lindsey & Swaim.

Ques. 14. You may state whether or not the firm name as shown on Exhibit "A" is the same as the firm name used on all the printed matter of your firm.

(Counsel for defendants objects to the question because the printed matter itself is the best evidence)

Ans. I think it was.

347 *Cross-Examination by Mr. Chas. O. Loucks.*

Ques. 1. Mr. Swaim, have you ever received any mail or correspondence in which your name has been mis-spelled in any way? Ans. Yes.

Ques. 2. In what way or ways has your name been mis-spelled in such mail or correspondence? Ans. Part of the mail that came to Wiley & Swaim was spelled "Swain" and part of the mail that came to Lindsey & Swaim was spelled "Swain".

Ques. 3. Have you not also received bills in which your name was spelled "Swain"? Ans. Yes.

Ques. 4. Have you not also paid drafts in which your name was spelled "Swain"? Ans. Yes.

Re-direct Examination by Mr. Huffman.

Ques. 1. You may state whether or not you or your firm ever authorized any persons to address the firm as "Lindsey & Swain"?

(Counsel for defendants objects to the question because it calls for a conclusion of the witness and because it has not been shown that the witness has personal knowledge of the entire matter inquired about).

Ans. Not as "Lindsey & Swain" but we have as "Lindsey & Swaim".

Re-cross-Examination by Mr. Loucks.

Ques. 1. Mr. Swaim, in your answer to your last question were you not stating merely what you personally have authorized and not what Mr. Lindsey or any one else may have authorized? Ans. I just simply stated the name as I had used it.

Ques. 2. As you personally had used it? and have authorized the use of it? Ans. Yes.

JULIAN L. SWAIM

348 Phone No. 55. MONTHLY STATEMENT.

Fairmount, Indiana, ... 190....

M. .....

To Lindsey & Swaim, Dr.
Dealers in
Lumber and Builders' Material

Terms: 30 Days. Exhibit "A".

349 United States of America, }
Northern District of Illinois, } ss

I, Charles T. Parker, A Notary Public within and for Grant County, in the State of Indiana, do hereby certify that the reason for taking the foregoing depositions is and the fact is that the testimony of the said witness is material and necessary for the complainants in the case in the caption of the said deposition mentioned, and that the said witness and each of them live and at the time of the taking of the said deposition did live at Fairmount in the County of Grant and state of Indiana, more than one hundred miles (100) from the city of Chicago, in the County of Cook and state of Illinois, where the Court at which said cause is to be tried was appointed by law to be held.

I further certify that notification of the time and place of the taking of the said deposition made and signed by the solicitors for the complainants was duly served on the solicitors for the defendants, to be present at the taking of the said deposition and to put interrogatories to the said witness if they might think fit.

I further certify that on the first day of November, 1902, I was attended at the place named in the said notification for the taking of the said deposition by Eathan A. Huffman and Geo G. Wharton solicitors for the complainants and Chas. O. Loucks solicitor for the defendants, and also by the witness Julian L. Swaim, who was of sound mind and lawful age; and the said witness was by me carefully examined, cautioned and sworn to testify to the truth, the whole truth
350 and nothing but the truth; that the said deposition by Dorothy Stanton, was reduced to typewriting under my personal supervision; that after carefully reading the same to the said witness and subscribed the same in my presence; that I retained the said deposition in my possession for the purpose of sealing and directing the same with this certificate of the reasons aforesaid for taking the said deposition with my own hand to the court for which the same was taken.

And I do further certify that I am not of counsel or attorney for either of the parties in the said deposition and caption named or in any way interested in the event of the said cause in the said caption named.

In Witness whereof I have hereto set my hand and affixed my Notarial seal this First day of November in the year of our Lord one thousand nine hundred and two.

CHARLES T. PARKER,
(Seal) *Notary Public.*

My commission expires May 15th, 1904.

Costs. Witness fee.	$1.60
Constable	.70
Notary Fee	5.00
	$7.30

These costs were paid by Plaintiffs.

CHAS. T. PARKER,
Notary Public.

(Endorsed) Received and Filed Nov. 3, 1902, Opened at request of Complts' Solr. Marshall E. Sampsell, Clerk.

351 IN THE CIRCUIT COURT OF THE UNITED STATES.

For the Northern District of Illinois—

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the Will of Robert G. Dun, deceased

vs.

Lumbermen's Credit Association William C. Clancy and Burton W. Stadden

In Equity.
Notice for taking of Depositions.

To Messrs. Atwood and Pease,
Defendants Solicitors.

Gentlemen:

Please take notice that on the 29th day of October 1902 at nine oclock A. M. before Charles M. Ball Notary Public, or in case of his absence or inability to act, before some other competent officer duly authorized under the statutes so to act, at the office of Shields & Pomerene, in Eagle Block, Cor-

ner of West Tuscarawas and South Market street in the City of Canton in the County of Stark and State of Ohio, we shall take the depositions of the following witnesses who reside more than one hundred miles from the place of trial in the above entitled cause to-wit: William Schreiner, Cornelius Schreiner, William Wagner J. E. Heinbaugh. and others. The examination of the said witnesses will continue from day to day until completed. The said depositions will be read in evideace on the part of the complainants on the trial of the said cause. You are invited to attend and cross examine if you so desire.

HOYNE, O'CONNOR & HOYNE,
LEFFIELD, TOWLE & LINTHICUM,
Solicitors for complainants.

Chicago, October 13th 1902.

Recd. a copy of the witin notice is hereby acknowledged by the receipt of a copy thereof this 13th day of October, A. D. 1902.

ATWOOD & PEASE,
Solicitors for Defendants.

352 Subpoena.

The State of Ohio, } ss.
Stark County, }

To William Schreiner, Lake, Ohio, Cornelius Schreiner, Lake, Ohio, J. E. Heinbaugh, Lake, Ohio, and William Wagner, Canton, Ohio.

You are hereby commanded to appear before me a notary public in and for said County and State, at the office of Shields and Pomerene, in the Eagle Block, corner of West Tuscarawas and South Market streets in the city of Canton, Stark County, Ohio, on Wednesday, the 29th day of October A. D. 1902 at 9 o'clock A. M. then and there to give evidence and the truth to say in a certain action pending in the Circuit Court of the United State for the Northern District of Illinois northern division wherein Mary B. Dun, Robert Dun Douglass, Francis J. Minton and Walter D. Buchanan, Executors and Trustees under the will of Robert G. Dun, deceased, are plaintiffs and the Lumbermen's Credit Association, William C. Clancy and Burton W. Stadden are defendants on the part of the complainants.

This you no wise omit under the penalty of the law. Given under my hand, this 23rd day of October, A. D. 1902. Petiti

CHAS. M. BALL,
Notary Public in and for Stark County, Ohio.

Oct. 29, 1902.

Received this writ Oct 23, 1902. and Oct. 24, 1902, I served each of the within named witnesses, by leaving a certified copy hereof with them personally. Serv. 55 copies. 1.00 mileage $3.45 total $5.00

E. C. BURNS,
Const.

353 IN THE CIRCUIT COURT OF THE UNITED STATES, Depo Wi nes

For the Northern District of Illinois—

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton, and Walter D. Buchanan, Executors and Trustees under the Will of Robert G. Dun, deceased,	In Equity.
vs.	
Lumbermen's Credit Association, William Clancy, and Burton W. Stadden	

At Canton, in the County of Stark and State of Ohio, on this 29th day of October, 1902 at 9 o'clock A. M. of said day, before me Charles M. Ball, a notary public within and for Stark County in the state of Ohio at the office of Shields & Pomerene in the Eagle Block, personally appeared Robert S. Shields, Solicitor for complainants and Charles O. Loucks solicitors for defendants.

And thereupon the following proceedings were had pursuant to notice and the attendance of counsel.

Complainants called as a witness in their behalf WILLIAM WAGNER, who being first duly sworn by me, testified as follows:

354 WILLIAM WAGNER of lawful age, being by me first cautioned and sworn deposes and says as follows:

Q. State your name, age, residence and occupation. A. My name is William Wagner, age 57, residence Canton, Ohio.

of Vag-

Occupation Secretary and Treasurer of the Citizens Building & Loan Company, Canton, Ohio.

Q. How long have you been acting as such Secretary and Treasurer? A. Secretary for 6 months and Treasurer for three years and a half.

Q. How long have you lived in Canton? A. 12 years last past.

Q. Where did you live before that? A. Hartville, northern part of this county.

Q. In what township is Hartville? A. In Lake Township.

Q. Is there a village in Lake Township called Lake? A. No sir but there is a village there called Uniontown, the post office is Lake.

Q. During your residence in Canton, have you frequently visited Lake Township? A. About once every year.

Q. What is the population of Uniontown or Lake Post Office? A. About five or six hundred. I am only guessing at the population.

Q. Do you know of a firm of Himebaugh and Schreiner. engaged in the lumber business in Lake Township? A. Yes sir. I know of a firm of Himebaugh & Schreiner. They are not engaged exclusively in the lumber business, they have a saw mill.

Q. How long have you known of this firm being engaged in this business? A. Well I have known them since they started. Not positive of the year. About five or six years ago.

Q. And do you know of any other firm of Himebaugh & Schreiner engaged in the lumber business or other business in Lake Township during the time mentioned? A. No sir.

Q. Are they still in business? A. So far as I know.

Q. And at what place? A. In the village of Uniontown, Lake Post Office.

355 Q. Do you know how the names of the members of the firm of Himebaugh & Schreiner are spelled? A. I do.

Q. How? A. H-i-m-e-b-a-u-g-h & S-c-h-r-e-i-n-e-r.

Cross Examination.

Q. How do you know Mr. Wagner about the spelling of these names? Have you recently investigated? A. I have not, no sir. I knew the father and the members of this firm and have always known how to spell their names.

Q. How many years ago did they go to school? A. About twenty years. I do not know the time.

Q. Do you know whether their names are still spelled in the same way? A. Yes sir.

Q. How do you know it? A. Well I have seen it on their letter-heads on their business cards and business sign.

Q. When was the last time you saw one of their cards or business signs? A. I saw one of their cards today.

Q. How did you happen to see one of their cards today? A. I asked to see it.

Q. Then you have recently investigated about the spelling of their names? A. No sir.

Q. Do you know if everyone else who has business dealings with this firm spell the name correctly?

Question objected to.

A. No sir.

Q. Do you know that it is a fact that a large number of Germans anglicize their names after being in this country a number of years?

Question objected to.

A. Well I presume they do.

Q. Have you had any business dealings with the firm of Himebaugh & Schreiner during the past ten years? A. I did not have with the firm. I had dealings with the Schreiners and also the Himebaughs.

Q. What has been the nature and extent of your deal-
356 ings with them? A. I paid to them money taking a receipt for it in settling up an estate but I cannot now think what it was. Come to think of it Himebaugh has two children who were minors and were the heirs in the estate and I paid it to the guardian. The Schreiners were heirs of this estate and I paid them money and took their receipt which is filed in the Probate court.

Q. Have you had any other business dealings or transaction with them during the past 10 years you can recollect? A. Not that I can now recall.

Q. Did you ever live at Uniontown, Lake Post Office? A. Yes sir.

Q. When? A. About 29 years ago.

Q. Were the Schreiner families living there at that time? A. No sir.

Q. Where did you remove to from Lake Post Office? A. Hartville.

of Wag-

Q. How far is Hartville from Lake Post Office? A. Four miles.

Q. And while living at Hartville did you frequently visit Lake Post Office? A. Yes sir.

Q. How long have you known the members of the firm of Himebaugh and Schreiner? A. For twenty or twenty-five years.

Q. How far is Lake from Canton? A. About 12 miles. Both Lake and Hartville are about the same distance from Canton.

Q. About how many times have you been to Lake in the last five years? A. I have been to Lake Post Office three or four times or a half dozen times. a year.

WILLIAM WAGNER.

Sworn to before me and subscribed in my presence this 29th day of October, A. D. 1902.

CHAS M. BALL,
Notary Public in and for Stark County, Ohio.

(Seal)

of r.

357 MANILIUS SCHREINER being first duly sworn deposes and says:

Q. State your name, age, residence and occupation. A. My name is Manilius Schreiner, age 46. residence Lake Post Office. Occupation is the engineer of the lumber mill and chop mill of Himebaugh & Schreiner.

Q. Are you a member of the firm of Himebaugh & Schreiner? A. Yes, sir.

Q. Who compose that firm? A. Jacob E. Himebaugh and myself.

Q. And where are you engaged in business? A. At Lake Post Office, Stark County, Ohio.

Q. Is Lake Post Office in the village called Uniontown? A. Yes, sir.

Q. What is the population of Uniontown? A. Well I could not tell you exactly what it is but I think in the neighborhood of four or five hundred.

Q. How long have you and Mr. Himebaugh been engaged in business at Lake Post Office. A. A little over six years last spring.

Q. Can you state definitely what time in the spring you went together? A. About the second or third of April.

Q. And what year. A. 96.

Q. State definitely what your business consists of. A. Well it is in grinding feed, making cider and sawing and planning.

Q. State how long you have been associated together as the firm of Himebaugh & Schreiner. A. Continuously since April '96.

Q. Is there any other firm of the name of Himebaugh & Schreiner engaged in business at Lake Post Office now or has there been any such firm since April '96 outside of your own firm? A. No, sir.

Q. Have you lived at Lake Post Office between April '96 and now? A. Yes, sir.

358 Q. Are you well acquainted with the people in Lake Township? A. Yes sir.

Q. And have you been since April 1896? A. Yes sir.

Q. Do you know of any firm in Lake Township doing business under the firm name of Himebaugh & Schreiner outside of your own firm since April 1896? A. No sir.

Q. You say your firm name is Himebaugh and Schreiner. A. Yes sir.

Q. How are the names of the individual members spelled? A. Himebaugh & Schreiner.

Q. Do you have business cards printed and in circulation? A. Yes sir.

Q. Have you any now? A. I have one right here. And here witness produces a card of the firm of Himebaugh & Schreiner and which is attached hereto marked "Exhibit A".

HIMEBAUGH & SCHREINER.
Dealers in
Hard and Soft Wood Lumber.
Lake, Ohio.

Marked on the back) Complainants Exhibit "A" Chas. M. Ball, Notary Public Stark Co. Ohio.

Cross-Examination.

Q. Mr. Schreiner have you ever received any mail in which your name has been misspelled?

Question objected to.

A. Yes sir. I have at different times.

Q. In what way has your name been misspelled?

Question objected to.

A. It has been Shriner.

Answer objected to also.

Q. When was it spelled in that way?

Question objected to.

A. At different times.

Answer objected to.

Q. When you receive mail addressed to you in which your name is spelled Shriner, you open it do you not?

Question objected to.

A. I generally do because there is no one else by that name around.

Answer objected to.

359 Q. Have you ever seen Mr. Himebaugh's name misspelled in any way?

Question objected to.

A. I did at different times.

Q. In what way have you seen his name misspelled?

Question objected to.

A. Sometimes it was Hine and sometimes it was Hein and other different ways.

Answer objected to.

Q. When mail comes to the firm of Himebaugh & Schreiner, in which the name of Himebaugh is misspelled, do you open the mail?

Question objected to.

A. I generally do.

Q. Do you know all the people of Lake Township? A. Most of them.

Q. You do not know all of them? A. No sir.

Re-direct Examination.

Q. Do you know substantially all the men engaged in business in Lake Township?

Objected to on the ground that it called for a conclusion of the witness.

A. Yes sir.

Q. Do you know of any family or families living at Lake Post Office now or since 1896 who spell their name S-c-h-r-i-n-e-r. A. No sir.

Re-cross-Examination.

Deposition of Manilius Schreiner.

Q. Have you any relatives or acquaintances with names of similar sound to your own, who spell the name differently? A. No sir.

MANILIUS SCHREINER.

Sworn to before me, and subscribed this 29th day of October A. D. 1902.

CHAS. M. BALL,
(Seal) *Notary Public in and for said Stark County, Ohio.*

Deposition of Jacob E. Himebaugh.

360 JACOB E. H-I-M-E-B-A-U-G-H- being duly sworn deposes and says:

Q. State your name, age, residence and occupation. A. My name is Jacob E. Himebaugh. My age is 41 years. My residence is Lake, Ohio, and my occupation is saw milling, and running a chop mill and cider press.

Q. How long have you lived at Lake? A. Six years ago last spring.

Q. Where did you move from? A. From Summit County.

Q. And are you in business along or in connection with some one? A. Manilius S-c-h-r-e-i-n-e-r and myself are partners in business.

Q. What is the firm name? A. H-i-m-e-b-a-u-g-h & S-c-h-r-e-i-n-e-r.

Q How are the individual names of the firm spelled? A. Himebaugh & S-c-h-r-e-i-ner.

Q. Does your firm issue business cards? A. Yes sir.

Q. Have you any with you? A. Yes sir.

Q. Is this your business card? A. Yes sir. Here witness produces a card which is asked to be attached to this deposition, marked "Exhibit B".

Complainants' Exhibit "B". Chas M. Ball, Notary Public, Stark County, Ohio. (Seal)

HIMEBAUGH & SCHREINER,
Dealers in
Hard and Soft Wood Lumber,
Lake. Ohio.

Q. You say you went into business together as H-i-m-e-b-a-u-g-h & S-c-h-r-e-i-n-e-r in the Spring of '96 at Lake, Ohio. A. Yes sir.

Q. Had you been in business together before that time? A. No sir.

Q. How large a place is Lake Post Office, Ohio? A. I do not know but I think about 300.

Q. Have you live there right along since about '96? A. Yes sir.

Q. Is there any other firm of like name, that is like the firm of Himebaugh & Schreiner engaged in business in Lake? A. There is none I know of.

Q. Well living in a village of 300 people you would likely know of such a firm, if any existed.

Objected to on the ground that it calls for a conclusion of the witness.

A. Yes sir.

361 *Cross-Examination.*

Q. Mr. Himebaugh, have you ever received any mail in which your name was misspelled?

Question objected to.

A. Yes sir.

Q. How was your name misspelled?

Question objected to.

A. Some times it was spelled H-i-m and sometimes it was spelled H-e-i-n and somtimes B-a-e-h.

Answer objected to.

Q. When your name has been misspelled in the ways which you have mentioned, you have opened the mail have you not?

Question objected to.

A. Yes sir. Most generally the post office box was on it.

Q. When the post office box was not on it, have you not opened it?

Question objected to.

A. Yes sir.

Q. Have you ever seen Mr. Schreiner's name misspelled in any way?

Question objected to.

A. Just the other day we received a letter to H-e-i-m-b-a-u-g-h & S-c-h-r-e-n and also received some He-i-m-b-a-u-g-h & C-o.

Q. Have you ever seen Mr. Schreiner's name spelled S-c-h-r-i-n-e-r?

Question objected to.

A I don't think I did. So often we receive mail in which the company name is misspelled, that I do not pay any attention to it. Deposition Jacob Himeb

Q When the company name is misspelled, you open the mail do you not

Question objected to.

A Yes, sir.

Q Have you any relatives with names of similar sound as your own who spell their names differently than you do?

Question objected to.

Some of the Himebaughs spell it H-e-i-m-b-a-u-g-h.

Q Do any of your relatives spell the name in any other way?

Question objected to.

A Not that I know of.

JACOB E. HIMEBAUGH.

Sworn to and subscribed before me this 29th day of October A. D. 1902.

CHAS. M. BALL,

(Seal). *Notary Public in and for said Stark County, Ohio.*

362 WILLIAM SCHREINER of lawful age, being duly sworn, deposes and says: Deposition Willia Schre

Q. State your name, age, residence and occupation. A. My name is William Schreiner, my age is 51. I live near Mogadore, Portage County, and my occupation is working in the Sewer Pipe Shop.

Q. How far is Mogadore from Lake Post Office? A. Six miles.

Q. Have you lived at Lake Post Office at any time since April 1896? A. Yes sir.

Q. Do you know of a firm of the name of Himebaugh & Schreiner engaged in business at Lake Post Office? A. Yes sir.

Q. It is said that they engaged in the lumber and sawing business. A. Yes sir.

Q. Do you know the individuals members of the firm. A. Yes sir. They are Himebaugh & Schreiner.

Q. Do you know when they commenced business at Lake Post Office. A. Yes sir.

Q. When? A. Spring of '96.

Q. What relative, if any, is Manilius Schreiner to you? A. Brother.

Q. How do you spell your name? A. S-c-h-r-e-i-n-e-r.

Q. You may state if that is the manner in which your brother's name is spelled. A. Yes sir.

Q. Was there in 1896, if you know, or it at any time since, if you know, any family or person in or about Lake Post Office of the name of Schreiner, whose name was spelled S-c-h-r-e-i-n-e-r. A. No sir.

Q. What other name, if any, is Lake Post Office known by? A. Uniontown.

Q. And how long has it been so known? A. Ever since I remember. About 30 years.

Cross-Examination.

Q. What line of railroad is Lake Post Office on? A. Valley Railroad.

363 Q. Have you ever received any mail in which your name has been misspelled?

Question objected to.

A. Yes sir.

Q. How has your name been misspelled?

Question objected to.

A. Shriner.

Answer objected to.

Q. When was your name misspelled in this way?

Question objected to.

A. Not many weeks ago.

Answer objected to.

WILLIAM SCHREINER.

Sworn to and subscribed in my presence this 29th day of October, A. D. 1902.

CHAS. M. BALL,

(Seal) *Notary Public in and for said Stark County, Ohio.*

364 CERTIFICATE. Certific Nota

United States of America,
Northern District of Ohio, } ss.
Eastern Division,

I, Charles M. Ball, a Notary Public within and for Stark County, in the state of Ohio, do hereby certify that the reason for taking the foregoing depositions are, and the fact is that the testimony of the said witness is material and necessary for the complainants in the cause in the caption of the said depositions mentioned, and that the said witnesses and each of them, live, and at the time of the taking of the said depositions did live at Canton, Lake Post Office and near Mogadore, in the County of Stark and State of Ohio, more than one hundred miles (100) from the city of Chicago, in the County of Cook and State of Illinois, where the Court at which said cause is to be tried was appointed by law to be held.

I further certify that notification of the time and place of the taking of the said depositions made and signed by the solicitors for the complainants was duly served on the solicitors for the defendants, to be present at the taking of the said depositions and to put interrogatories to the said witnesses if they might think fit.

I further certify that on the 29th day of October, 1902, I was attended at the place named in the said notification for the taking of the said depositions by Robert S. Shields, solicitor for the complainants and Charles O. Loucks, solicitor for the defendants, and also by the witnesses William Wagner, Manilius Schreiner, Jacob E. Himebaugh and William Schreiner who were of sound mind and lawful age; and the said witnesses were and each of them was by me care-
365 fully examined, cautioned and sworn to testify to the truth, the whole truth and nothing but the truth; that the said depositions were taken down in short hand by Earl Huberty, a stenographer, and by him reduced to typewriting under my personal supervision; that after carefully reading the same to the said witnesses they and each of them subscribed the same in my presence; that I retained the said depositions in my possession for the purpose of sealing and directing the same with this certificate of the reasons aforesaid for taking the said depositions with my own hand to the court for which the same were taken.

And I do further certify that I am not of counsel or attorney for either of the parties in the said depositions and caption named or in any way interested in the event of the said cause in the said caption named; and I do further certify that all erasures and interlineations herein were made by me in the presence of and with the consent and under the instructions of the several witnesses and of the solicitors of the complainants and respondents.

In Witness whereof I have hereto set my hand and affixed my notarial seal this 29th day of October, in the year of our Lord one thousand nine hundred and two.

CHAS. M. BALL,
Notary Public, in and for Stark County, Ohio.

(Endorsed) Received and Filed Nov. 7, 1902, Marshall E. Sampsell, Clerk.

366 DEPOSITIONS OF JOHN BRAWLEY AND JOHN A. BRAWLEY.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois—

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the Will of Robert G. Dun, deceased,	In Equity.
vs.	Notice for taking of depositions.
Lumbermen's Credit Association, William C. Clancy and Burton W. Stadden	

To Messrs. Atwood & Pease,
Defendants' Solicitors.

Gentlemen:—

Please take notice that on the 1st day of November 1902 at ten o'clock A. M. before Charles E. Humeston, Notary Public, or in case of his absence or inability to act, before some other competent officer duly authorized under the statutes so to

act, at the office of said Charles E. Humeston, in the City of Gould City in the County of Mackinac and State of Michigan, we shall take the depositions of the following witnesses who reside more than one hundred miles from the place of trial in the above entitled cause, to-wit: John Brawley, John A. Brawley, and others. The examination of the said witnesses will continue from day to day until completed. The said depositions will be read in evidence on the part of the complainants on the trial of the said cause you are invited to attend and cross examine if you so desire. Notice

HOYNE, O'CONNOR & HOYNE,
OFFIELD, TOWLE & LINTHICUM,
Solicitors for Complainants.

Chicago, October 13th, 1902.

Recd. a copy of the within notice is hereby acknowledged by the receipt of a copy thereof this 13th day of October A. D. 1902.

ATWOOD AND PEASE,
Solicitors for Defendants.

367 IN THE CIRCUIT COURT OF THE UNITED STATES

For the Northern District of Illinois

Northern Division.

Mary B. Dun? Robert Dun Douglass? Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the will of Robert G. Dun, deceased?	In Equity.
vs	
Lumbermen's Credit Association William Clancy and Burton W. Stadden.	

At Gould City in the County of Mackinac and State of Michigan, on the First day of November, 1902, at 10 o'clock of said day, before me, Charles E. Humestion, a Notary Public within and for Mackinac County in the State of Michigan at my office in Gould City, aforesaid, personally appeared Charles Conner, Solicitor for Complainants, and Louis B. Dorr, Solicitor for Defendants.

And thereupon the following proceedings were had pursuant to notice and the attendance of counsel.

John Complainants called as a witness in their behalf JOHN BRAWLEY, who being first duly sworn by me, testifies as follows,—

Q. Where do you reside Mr. Brawley? A. In Newton township, Mackinac County, Michigan.

Q. How far is your residence from Gould City? A. Well, where I live is two miles and a half.

Q. How long have you resided there. A. I have lived there since about 1884 or 1885.

Q. Who is John A. Brawley as related to you? A. He is my son.

Q. Are you engaged in business with him? A. Yes sir.

Q. That is the lumbering business, as he has testified. A. The lumbering business, yes sir.

368 Q. How do you spell your name, Mr. Brawley? A. Brawley.

Q. Have you ever spelled it in a different manner? A. I have.

Q. When? A. Well, it would be about 1881.

Q. What was your manner of spelling your name previous to 1881? A. Broley.

Q. Since that time you have uniformly spelled the name Brawley in all business transactions? A. Yes sir, since 1882.

Q. Mr. Brawley are you well acquainted with the people doing business in Gould City and vicinity? A. Yes sir.

Q. Are there any people engaged in the lumber business at Gould City or vicinity with whom you are not acquainted? A. Well yes, I think there is, there are new firms coming in all the time with whom I am not acquainted.

Q. As one of the older residents of Newton township have you not a complete acquaintance with the people of that township?

Objection by counsel for defendant, witness has already answered, as far as is material to this examination.

A. Yes sir.

Q. Now, Mr. Brawley, do you know of any person or persons who are now doing business at Gould City or vicinity or who have done business there since 1895 by the name of Brewley.

Objection by counsel for defendant, question is not re-

stricted to the lumber business, and as to that business witness has already shown that he has not sufficient knowledge upon which to base his answer.

A. No, I do not.

Q. If there had been any person or company by the
369 name of Browley engaged in business at Gould City or vicinity at any time since 1895 would you have been likely to know them?

Objection by counsel for defendant.

A. I certainly would.

Cross-Examination.

Q. How well acquainted are you Mr. Brawley with your neighbors in the lumber business. A. Why, I am as familiar with them as I naturally could be without being friends to them.

Q. How often do you see them? A. O, I see them a good many times during the year.

Q. Oftener than once a month? A. No, not much oftener than that, some times I see them twice a month, and then I don't get out oftener than that.

Q. How often do you get into Gould City? A. Well, I come to every meeting of the school board.

Q. How often is that? A. About eight times a year, and about as many more times on other matters.

Q. You spend a good deal of your time in the woods with your gang of men? A. Yes sir.

Q. In fact you are there most of the time? A. Yes, during the winter.

Q. In fact in the winter time, you are in the woods all the time? A. Nearly so. I am principally in the woods in the winter time, and once in awhile in Gould City.

Q. You have your mail brought to you? A. Yes, it comes down.

Q. A new firm might establish an office and do work in the woods quite a while without you knowing it? A. O, no.
370 Q. You changed the spelling of your name to Brawley before your son did, didn't you? A. Well, no I think not, we went into business together.

Q. When did you take up your government lands here? A. Between the years of 1881 and 1882.

John Q. Do you still own the same lands now? A. Yes sir.

Q. At that time your name was Broley? A. Yes sir.

Q. And the title of your lands stands on the records as Broley? A. Yes, I should think it would.

Q. You never had it changed, did you? A. No, not on the title of the property.

Q. Have you ever had people misspell your name, Mr. Brawley. A. Yes, they have spelled it different ways.

Q. Tell us some of the different ways. A. Browley and Broley.

Q. Did you ever see any mispelling where the a was put in correctly with the misspelling somewhere else. A. No, I never noticed that.

Q. At the time when you made this change in the spelling, did you make a change in pronunciation? A. No, I guess not.

Q. So that you pronounce Brawley and Broley the same? A. Well they went about the same?

Q. Has it been your experience Mr. Brawley that it is a very common mistake to substitute the letter o for the letter a in your name?

Objection by counsel for Complainant as immaterial.

A. Well, no.

Q. Your son is the office man in your business? A. Yes sir he is.

Q. So you dont see much of the mail that comes to the 371 firm. A. Well, I don't see much of the mail that comes to the firm.

Q. But in the little that you have seen, you have occasionally noticed mistakes as you testified before. A. Yes, I have noticed mistakes in spelling.

JOHN BRAWLEY

372 IN THE CIRCUIT COURT OF THE UNITED STATES Depos A.

For the Northern District of Illinois

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, executors and trustees under the will of Robert G. Dun, Deceased,

vs.

Lumbermen's Credit Association, William Clancy and Burton W. Stadden.

} In Equity

At Gould City, Mich in the County of Mackinac and State of Michigan, on this First day of November, 1902, at 10 o'clock of said day, before me Charles E. Humeston, a Notary Public within and for Mackinac County, in the State of Michigan at my office in Gould City, aforesaid, personally appeared Charles Conner, Solicitor for Complainants, and Louis B. Dorr, Solicitor for Defendants.

And thereupon the following proceedings were had pursuant to notice and the attendance of counsel.

Complainants called as a witness in their behalf JOHN A. BRAWLEY, who being first duly sworn by me, testified as follows,—

Q. Mr. Brawley where do you reside? A. In Newton Township.

Q. Is the village of Gould City located in Newton Township? A. Yes sir.

Q. Is Newton Township a township of Mackinac County? A. Yes.

Q. How long have you been a resident of Newton Township, Mackinac, County? A. Have had a permanent residence here since 1887.

Q. Where is your post office address? A. Gould City.

373 Q. In what business are you engaged? A. The business of general lumbering.

of John
y.

Q. How long have you been engaged in that business? A. Since 1889.

Q. How do you spell your name. A. It is spelled Brawley.

Q. Have you ever spelled it, or been in the custom of spelling it in any other manner? A. Yes.

Q. In what manner did you formerly spell it? A. Formerly spelled it Brolev.

Q. Have you ever been in the habit of spelling it in that manner since you have been in business here? A. Not since I have been in business.

Q. Then since 1889 you have uniformly spelled the name Brawley? A. Yes sir.

Q. Are you well acquainted with the residents and business men of Gould City and vicinity. A. Yes.

Q. To your knowledge are there or have there been since 1889 any person or persons doing business in Gould City or vicinity by the name of Browley? A. None that I know of.

Q. If there had been persons of that name doing business in Gould City or vicinity during the period named would you have been likely to know of them?

Objection by counsel for Defendant,—

And the said John A. Brawley being cross examined by Louis B. Dorr councel for Defendant testifies as follows,—

Q. When, Mr. Brawley, did you first hear of this case? A. The first knowledge I had of the case was from Mr. Connor about two weeks ago.

374 Q. Since then have you made any inquiry in Gould City or vicinity for parties by the name of Browley? A. I have not.

Q. How large a population has Gould City, and the surrounding territory? A. Probably four or five hundred who use Gould City as their post office.

Q. What portion of that five hundred is in the lumber camps and outlying districts? A. Possibly two hundred fifty or three hundred.

Q. Are you personally acquainted with these people? A. I believe that I am acquainted with the most of them.

Q. But not all? A. O, there may be a man or two in the town that I am not acquainted with.

Q. Have you any office or place of business in Gould City? A. No sir.

Q. Have you ever had? A. No sir.

Q. How do you do business, by correspondence? A. Yes sir, largely so.

Q. There are a number of other lumber camps in the vicinity who have no place of business in Gould City who do business in the same way. A. I presume there are.

Q. Do you know? A. There are some.

Q. How often do you visit around these camps on business or otherwise? A. I don't visit the camps.

Q. In your business Mr. Brawley, how many approximately do you correspond with? A. One hundred or so.

375 Q. Many of them strangers? A. Yes.

Q. Do you get checks and Money Orders from them? A. From some of them.

Q. Do you receive circulars, advertising circulars, very often through the mail from mail order houses like Montgomery Ward & Co., etc.? A. Yes sir.

Q. Now has it ever happened to you, Mr. Brawley that on circulars received or in correspondence your name has been misspelled? A. Yes sir.

Q. Tell us some of the wrong spellings. A. Brolie, Brolly, Broly, Broley.

Q. Did you ever receive one spelled Browley. A. I may have.

Q. You would not be sure either way? A. No, they make their o and a so near alike that it is pretty hard to tell.

Q. In fact, to substitute an a for an o, or an o for an a is a pretty common mistake in your experience, is it not?

Question objected to by council for Complainant.

A I have known of such cases.

Q. When mail comes to Gould City with your name misspelled, do you get it? A. Yes sir, generally, I do not know that I get it all or not.

Q. What you do get, you open don't you?

Objection to the question by council for Complainant.

A. Yes.

Q. Do or have you ever received checks or money orders with your named misspelled. A. None that I recollect of, most of them are received from persons to whom my name is familiar, and who make their checks from the bill head.

Q. But you wouldn't be sure that you had not? A. I would not be positive.

376 Q. If you should get one with your name misspelled you would endorse it in that way and get the money on it, would you not. A. I have no recollection of any case of that kind.

John

Motion by defendant's counsel to strike out the answer as irresponsive.

Q. When did you make this change in the spelling of your name. A. Since the first letter heads we had printed when we went into business about 1889.

Q. Why did you make the change? A. Because we deemed the other was the wrong way to spell the name.

Q. Did you change the pronunciation? A. No sir.

Q. You came here about 1887, did you do any business of any kind, or were you known here under the name of Broley? A. Well, yes, that is the way the name was spelled at first.

Q. Was that change authorized by the courts? A. No sir.

Q. Are there many people, as far as you know now living in Gould City who knew you under that name, Broley? A. Well, no not very many.

Q. There may be a few? A. Yes.

Q. Can you name any? A. Well, yes, Mr. Wilson Newton.

Q. Can you think of any others? A None that I can think of.

Objection to the question by councel for Complainant.

Q. Have you any relatives, or do you know any people in Gould City or the surrounding country whose names are similar in sound to your own, but different than your own in spelling. A. I do not know of any.

377 *Re-direct Examination.*

Q. How far is your place of business located from Gould City? A. About three miles.

Q. Gould City you have testified is your postoffice address, is that your shipping point also. A. No sir.

Q. Since you have been in business have you used printed forms, letter heads, etc? A. Yes sir.

Q. And on such printed statements and letter heads has your name been uniformly spelled Brawley? A. It has.

Re-cross Examination.

Q. Most of these lumber camps previously spoken of, and business offices are out several miles from Gould City, are they not? A. I should say they were from a mile and a half to five miles.

Q. Do you know if most of the others use Gould City as a shipping point or not? A. I don't think they do. Deposition A. Bra

Q. So that Gould City is little more than a post office to them? A. Gould City is the principle place in the township, except as a shipping point.

Q. There is no R. R. station here, and trains never stop here? A. Not as a regular schedule.

J. A. BRAWLEY

378 United States of America
Western District of Michigan } ss.
Northern Division.

I, Charles E. Humeston, a Notary Public within and for Mackinac County, in the State of Michigan, do hereby certify that the reason for taking the foregoing depositions is and the fact is that the testimony of the said witnesses is material and necessary for the complainants in the cause in the caption of the said depositions mentioned, and that the said witnesses and each of them live, and at the time of the taking of the said depositions did live near Gould City, Michigan, in the county of Mackinac, and State of Michigan, more than One hundred miles (100) from the City of Chicago, in the County of Cook and State of Illinois, where the Court at which said cause is to be tried was appointed by law to be held. Certificat notary

I further certify that notification of the time and place of the taking of the said depositions made and signed by the solicitors for the complainants was duly served on the solicitors for the defendants, to be present at the taking of the said depositions and to put interrogatories to the said witnesses if they might think fit.

I further certify that on the First day of November, 1902, I was attended at the place named in the said notification for the taking of the said depositions, by Charles Conner, solicitor for the complainants and Louis E. Dorr, solicitor for the defendants, and also by the witnesses John A. Brawley and John Brawley, who were of sound mind and lawful age; and the said witnesses were and each of them was by me carefully examined, cautioned and sworn to testify to the truth, the whole truth and nothing but the truth; that the said depositions were taken by typewriter in the presence of the witnesses

of under my personal supervision; that after carefully reading the same to the said witnesses they and each of them subscribed the same in my presence; that I retained the said depositions in my possession for the purpose of sealing and directing the same with this certificate of the reasons aforesaid for taking the said depositions, with my own hand to the court for which the same were taken.

379 And I do further certify that I am not of counsel or attorney for either of the parties in the said depositions and caption named, or in any way interested in the event of the said cause in the said caption named.

In Witness Whereof I have hereto set my hand and affixed my Notarial seal this First day of November, in the year of our Lord, One thousand Nine Hundred and Two.

CHAS E HUMESTON

(Seal) *Notary Public.*

I do hereby certify that the above named witnesses John Brawley and John Brawley have severally attended before me as witnesses in the above cause one day and have traveled four miles and each of them are entitled to the sum of one dollar & fifty cents for witness fees & 40c as mileage which said sums amounting to three dollars & eighty cents have been paid by complainant I further certify that my services for taking the foregoing depositions are the sum of five dollars, which said sum has also been paid by complainants.

C. E. HUMESTON,

A Notary Public in and for Mackinaw County

(Endorsed) Received and Filed Nov. 8, 1902 Marshall E. Sampsell, Clerk.

380 DEPOSITIONS OF J. NOTT HOFFMAN, ET AL. Notice.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois—

Northern Division.

Mary B. Dun, Robert Dun Douglass. Francis L. Minton and Walter D. Buchanan, Executors and trustees under the will of Robert G. Dun, deceased,	In Equity.
vs.	Notice for taking of Depositions.
Lumbermen's Credit Association, William C. Clancy and Burton W. Stadden,	

To Messrs. Atwood & Pease,
Defendants' Solicitors.

Please take notice that on the 29th day of October, 1902, at ten o'clock A. M. before Charles P. Gableman, Notary Public, or in case of his absence or inability to act, before some other competent officer duly authorized under the statutes so to act, at the office of Eylar & Douglass, in Hoffman Block, Cor of Emitt and Water streets in the City of Waverly in the County of Pike and State of Ohio, we shall take the depositions of the following witnesses who reside more than one hundred miles from the place of trial in the above entitled cause to-wit: J. N. Hoffman, and others. The examination of the said witnesses will continue from day to day until completed. The said depositions will be read in evidence on the part of the complainants on the trial of the said cause. You are invited to attend and cross examine if you so desire.

HOYNE, O'CONNOR & HOYNE,
OFFIELD, TOWLE & LINTHICUM,
Solicitors for Complainants.

Chicago, October 13th, 1902.

Recd. a copy of the within notice is hereby acknowledged by the receipt of a copy thereof this 13th day of October A. D. 1902.

ATWOOD & PEASE,
Solicitors for Defendants.

n of J. Hoffman.

381 IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois.

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the will of Robert G. Dun, deceased,

vs.

Lumbermen's Credit Association, William Clancy and Burton W. Stadden,

} In Equity.

At Waverly in the County of Pike and State of Ohio, on this 29th day of October, 1902, at 10 o'clock A. M. of said day before me, Charles P. Gabelman, a Notary Public within and for said Pike County, in the state of Ohio, at the office of Eylar & Douglass, in the Hoffman Block, on the corner of Emmitt and Water streets at Waverly, Ohio, personally appeared James A. Douglas, solicitor for complainants and Charles O. Loucks, solicitor for defendants.

And thereupon the following proceedings were had pursuant to notice and the attendance of counsel.

Complainants called as a witness in their behalf J. NOTT HOFFMAN, who being first duly sworn by me, testified as follows:

382 J. NOTT HOFFMAN, of lawful age being by me first duly sworn as hereinafter certified, deposes and testifies as follows:—

Question 1. State your name, age, place of residence and occupation. Answer: J. Nott Hoffman; 49 years; Waverly, Ohio; Manufacturer of Rims and spokes.

Q. 2. Are you now connected with any business interests in Waverly, O.? and if so in what business and in what capacity. A. Merchant, railroad ties, Opera House, and the Waverly Bent Wood Co.

Q. 3. State what persons compose said Company and

whether or not there has ever been any change in the organization. A. J. Nott Hoffman and George E. Breece formerly composed said Co. I bought out Mr. Breece's interests a year ago last October or September, and am now the only individual composing said Co. Deposition of J. Nott Hoffman

Q. 4. You may state under what firm name said Co. formerly operated and whether or not it still operates under the same name. A. It formerly operated under the name of the "Waverly Bent Wood Co", and still operates under the name of the "Waverly Bent Wood Co."

Q. 5. State if you know, how long said Co. has operated under its present firm name, and whether or not it ever operated under any other firm name. A. About seven years, I am only guessing at it, it might be six years or it might be seven years. It has never operated under any other firm name.

Q. 6. Have you any knowledge of a Co. here known as the Waverly Bending Co. and if so what is that knowledge? A. I don't know of any other Bending Co. in town, and I never knew of any other Bending Co. here, I have no knowledge of any Co. known as the Waverly Bending Co. Our Co. is known as the "Waverly Bent Wood Co." I have a four month's note, just out of the Post Office from a firm with whom I have done business for five or six years that is made payable to the Waverly Bent Wood Co.

Cross-Examination by Charles O. Loucks.

Question 1. Mr. Hoffman, is the Waverly Bent Wood Co. a corporation? Ans. No.

Q. 2. Have you ever been interested in any corporation engaged in the Bent Wood business? A. No.

Q. 3. Then the Waverly Bent Wood Co. is only a name under which you and Mr. Breece have operated? A. Yes.

383 Q. 4. Have you and Mr. Breece ever operated under any other firm name? A. Not that I know of.

Q. 5. Have you ever used or operated under the name of "The Waverly Bending Co." A. No, sir.

Q. 6. Have you not received mail addressed to the Waverly Bending Co? A. I wouldn't know whether I got letters for the Waverly Bending Co. or not, they could have been such letters as that come in.

Q. 7. Have you never heard of your firm being spoken of as

) of J. offman.

"The Waverly Bending Co." A. Well I might have heard that too, and I might also heard of it as the Waverly Bent Wood Works, but the name of it is the Waverly Bent Wood Co. as it always has been.

Q. 8. Have you never seen the name and title of the Waverly Bent Wood Co. misspelled or changed in any form? A. Yes sir, I have.

Q. 9. In what ways? A. Well, probably in a letter being addressed to us.

Q. 10. If mail has come to you addressed Waverly Bending Co. have you not opened it? A. The Postmaster always throws it in my box.

Q. 11. How do you know he does? A. I find it there, if there is any; the reason we get all the letters addressed to a Bent Wood is because there isn't any others here.

Q. 12. Do you use R. G. Dunn's & Co's Reference Books? A. We have used them.

Q. 13. Have you ever looked up the name under which you have been doing business in Dunn's reference book, to see whether or not you were rated? A. I might have looked it up, but I don't just know of it now, I can't tell at present.

Q. 14. Have you ever been a subscriber to R. G. Dunn & Co's book? A. I don't know that I ever was.

Q. 15. Will you swear that you have not been, either you or your firm? A. Mr. Breece has been a subscriber for several years but not the Waverly Bent Wood Co.

Q. 16. Do you mean Mr. Breece who was formerly a partner of yours? in the Waverly Bent Wood Co. A. Yes I mean Mr. Breece.

384 Q. 17. Have you ever had access to any of R. G. Dunn's books subscribed for by any other person than Mr. Breece who was formerly your partner? A. I have probably looked over Jas. Emmitt's who used to have one.

Q. 18. How long have you been consulting the books subscribed for by Mr. Breece? A. I couldn't tell that, probably I haven't looked at the book more than two or three times in my life. It wouldn't by my duty to look it up.

Q. 19. Whose duty would it be to look it up? A. It would be the duty of the bookkeeper down there, that is of the Bent Wood Co.

Q. 20. Do you know that the firm of Hoffman & Breece have been rated in R. G. Dunn's book for many years as the Waverly Bending Co? A. My knowledge of that book has been so meager that I couldn't tell. I couldn't tell whether it

was the Waverly Bent Wood Co., The Waverly Bending Co., or the Waverly Bent Wood Works.

Q. 21. Why do you say the Waverly Bent Wood Works? A. Because that would also apply, because when the Postmaster gets any mail addressed that way he brings it to me.

Q. 22. Why do you say the Waverly Bending Co? A. Simply because you asked the question.

Q. 23. Did not Mr. Breece, or your bookkeeper or any one else ever call your attention to the fact, that your firm was rated in R. G. Dunn & Co's book as the Waverly Bending Co? A. No, Sir.

Q. 24. You never knew that your firm was so rated or described in Dunn's book? A. No, sir, I never noticed it. I don't recollect of any body ever having called my attention to it.

Q. 25. How long were you and Mr. Breece in partnership together? A. About five or six years.

Q. 26. What is the business of the Waverly Bent Wood Co? A. We make rims and spokes and caps and reaches for buggies and wagons.

Q. 27. When did you first hear of this case? A. I couldn't tell whether it was yesterday or today. Charley there told me he wanted to take my deposition.

Q. 28. Did he tell you in regard to what your deposition was to be taken? A. Charley, there, said something about R. G. Dun & Co. and somebody else, I don't recollect because I forgot about it.

385 Q. 29. Do you remember whether he said anything in regard to the facts in regard to the Waverly Bending Co. or Waverly Bent Wood Co? A. He didn't tell me anything about the facts.

Q. 30. Did he tell you anything in regard to the Waverly Bending Co. or the Waverly Bent Wood Co.? A. I don't recollect a thing about it only that you wanted to take my deposition, I don't recollect whether he mentioned anything about it or not.

Q. 31. Have you talked with any one else in regard to this case, with reference to the Waverly Bent Wood Co. or Waverly Bending Co? A. The Book-keeper, Mr. J. A. McBride, spoke to me about it saying that you had been down and wanted to take my deposition.

Q. 32. Was he the only other person with whom you have talked with regard to the same? A. Yes, sir.

of J. ffman.

Q. 33. Has any correspondence been submitted to you relating in any way to this case or the taking of your depositions? A. No, Sir.

Q. 34. You are the owner of this building in which we are now taking these depositions? A. I am.

J. NOTT HOFFMAN

386 Counsel for Defendants objects to the taking of the following deposition because no notice of the taking of the same has been served upon the Defendants or their attorneys.

of John de.

JNO. A. McBRIDE, of lawful age, being first duly sworn as hereinafter certified, deposes and says as follows:—

Question 1. State your name, age, place of residence and occupation. Answer. John A. McBride, 42 years of age, Waverly, Ohio, and my occupation, a book-keeper.

Q. 2. State how long you have been employed in that capacity, and by whom. A. Four years, by the Waverly Bent Wood Co.

Q. 3. During your employment, under what firm name has the Co been doing business? A. The Waverly Bent Wood Company.

Q. 4. During your employment what individuals have composed said company? A. When I first began work for the Waverly Bent Wood Co., in 1898; it was a partnership composed of George E. Breece and J. Nott Hoffman. In August 1899 W. W. Breece became a partner and remained in the business until the first day of October, 1901, at which time Mr. Hoffman bought out the Breeces, and he has since that time been the sole owner and proprietor.

Q. 5. Have you any knowledge of a company known as the Waverly Bending Company, and if so what is that knowledge? A. I have no knowledge of any company by that name; there is no such company here to my knowledge, now or formerly.

Cross-Examination by Mr. Loucks.

Q. 1. Have you ever seen the name of the Waverly Bent Wood Co., misspelled or changed in any way or form? A. Letters have come to us directed to the Waverly Bent Wood Works, and we have also received letters directed to the Waverly Spoke & Rim Works, rather seldom, though.

Q. 2. Have you ever received any mail or seen any in which the name was spelled in any other way? A. I think we have also received letters directed to the Waverly Bending Company, but these letters are seldom.

Q. 3. When you have received letters addressed to the Waverly Bending Company, you have opened them, have you not? A. All mail that has been intended for the Waverly Bent Wood Co. is put in Mr. Hoffman's box at the Post Office and he gets it out and opens it and reads it, before I see it.

387 Q. 4. When did you say that Mr. Hoffman bought the Breeces out? A. October 1st, 1901.

Q. 5. Do the names of the Breeces still appears upon the stationery? A. They do, we have never had any stationery printed since they went out.

JOHN A. MCBRIDE.

388 United States of America,
Northern District of Illinois, } ss

I, Charles P. Gabelman, A Notary Public within and for Pike County, in the State of Ohio, do hereby certify that the reason for taking the foregoing depositions is and the fact is that the testimony of the said witnesses is material and necessary for the complainants in the case in the caption of the said depositions mentioned, and that the said witnesses and each of them live and at the time of the taking of the said depositions did live at Waverly, in the County of Pike and state of Ohio, more than one hundred miles (100) from the city of Chicago, in the County of Cook and state of Illinois, where the Court at which said cause is to be tried was appointed by law to be held.

I further certify that notification of the time and place of the taking of the said depositions made and signed by the solicitors for the complainants was duly served on the solicitors for the defendants, to be present at the taking of the said depositions and to put interrogatories to the said witnesses if they might think fit.

I further certify that on the 29th day of October, 1902, I was attended at the place named in the said notification for the taking of the said depositions by James A. Douglas solicitor for the complainants and Charles O. Loucks, solicitor for the defendants, and also by the witnesses J. Nott Hoffman, and John A. McBride who were of sound mind and

lawful age; and the said witnesses were and each of them was by me carefully examined, cautioned and sworn to
389 testify to the truth, the whole truth and nothing but the truth; that the said depositions were by me reduced to writing in the presence of the witnesses; that after carefully reading the same to the said witnesses they and each of them subscribed the same in my presence; that I retained the said depositions in my possession for the purpose of sealing and directing the same with this certificate of the reasons aforesaid for taking the said depositions with my own hand to the court for which the same were taken.

And I do further certify that I am not of counsel or attorney for either of the parties in the said depositions and caption named or in any way interested in the event of the said cause in the said caption named.

In Witness whereof I have hereto set my hand and affixed my Notarial seal this 29th day of October in the year of our Lord one thousand nine hundred and two.

CHARLES P. GABELMAN,
(Seal) *Notary Public.*

Witness Fees	$1.50
Notary Fees	$3.50
Total fees	$5.00

Received of R. G. Dun & Co. five dollars ($5.00) in full of all fees as above.

CHARLES P. GABELMAN.

(Endorsed) Received and Filed Nov. 10, 1902, Opened Nov. 10, 1902, by Clerk, Marshall E. Sampsell, Clerk.

390 IN THE CIRCUIT COURT OF THE UNITED STATES, Notice

For the Northern District of Illinois—

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and trustees under the will of Robert G. Dun, deceased,

vs.

Lumbermen's Credit Association, William C. Clancy and Burton W. Stadden.

In Equity.
Notice for taking of Depositions.

To Messrs. Atwood & Pease,
Defendants' Solicitors.

Gentlemen:—

Please take notice that on the 3rd day of November 1902 at ten o'clock A. M. before John E. Martin Notary Public, or in case of his absence or inability to act, before some other competent officer duly authorized under the statutes so to act, at the office of said Martin, corner of Fifth Avenue and Superior street in the city of Antigo in the County of Langlade and State of Wisconsin, we shall take the depositions of the following witnesses who reside more than one hundred miles from the place of trial in the above entitled cause to-wit: C. D. Mallay, E. S. Koepenick, and others. The examination of the said witnesses will continue from day to day until completed. The said depositions will be read in evidence on the part of the complainants on the trial of the said cause. You are invited to attend and cross examine if you so desire.

HOYNE, O'CONNOR & HOYNE,
OFFIELD, TOWLE & LINTHICUM,
Solicitors for Complainants.

Dated, October 21st 1902.

Received copy of the within notice this 21st day of October, A. D. 1902.

ATWOOD & PEASE,
Solicitors for Defendants.

391 IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois—

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and trustees under the will of Robert G. Dun, deceased,

vs.

Lumbermen's Credit Association, William Clancy and Burton W. Stadden,

At Antigo, in the County of Langlade and State of Wisconsin, on this 3d day of November, 1902, at ten o'clock A. M. of said day before me, John E. Martin a notary public within and for the County of Langlade and State of Wisconsin at my office in the Jaekel building, on the corner of Fifth Avenue and Superior street, personally appeared Max Hoffman, solicitor for complainants and Louis B. Dorr, solicitor for defendants.

And thereupon the following proceedings were had pursuant to notice and the attendance of Council.

Complainants first called as a witness in their behalf C. D. MARROY, who being first duly sworn by me testified as follows:

392

Ex. B.
J. E. M.
Koepenick, Wis., ... 190.

M .....

Bought of Frank Roethle & Co.
Manufacturers of and Wholesale Dealers in
Hard and Soft Lumber.
Remittances Must Be made Free
Dressed Lumber a Specialty.
Of Exchange or Express Charges.

Car No.	No of Pieces	Size	Length	No of Feet		Price	

Ex. A.
J. E. M.

Exhib

Antigo, Wis. June 9, 1900 $24 77/100

First National Bank, Pay to C. D. Malloy or bearer twenty-four and 77/100 dollars.

FRANK ROETHLE & Co.

No. 1903.
(Two cent Internal Revenue Stamp)
(duly canceled.)
(Stamped across the face) First National Bank, Antigo, Wis.

(Endorsed on the back) C. D. Malloy. Ex. A. J. E. M.

of C. 393 IN THE CIRCUIT COURT OF THE UNITED STATES.

For the Northern District of Illinois,

Northern Division.

Mary B. Dun, *et al.*,
vs.
Lumbermen's Credit Association, *et al.*,
Plaintiffs,
Defendants.

C. D. MALLOY, being duly sworn, testifies as follows:

Direct Examination by Mr. Hoffman.

Q. What is your name? A. C. D. Malloy.
Q. Where do you live? A. I live at Koepenick, Langlade County, Wisconsin.
Q. How long have you lived at Koepenick? A. Nearly three years.
Q. Do you remember the time you first moved to Koepenick? A. I went to work the 8th day of December, 1899.
Q. Have you been there steady ever since? A. Yes sir.
Q. What kind of a place is Koepenick? A. A flag station.
Q. How many business concerns are there there? A. Two.
Q. During all the time you lived there? A. Yes.
Q. Who are they? A. The saw mill and Mr. Koepenick is there.
Q. Who manages the saw-mill, or who did during your time? A. Frank Roethle and Company.
Q. Have you any check or other signature of his with you? A. Yes I have a check.
Q. Is this the signature of Frank Roethle and Company? A. Yes sir.
Q. This check was given to you? A. Yes sir.
Check Marked Ex. "A".

Mr. Dorr objects to the introduction of this check in evidence. Objection over-ruled.

Ex. "A" offered in evidence.

"Antigo, Wisconsin, June 9th., 1900. $24.77

First National Bank pay to C. D. Malloy or Bearer $24.77

FRANK ROETHLE AND COMPANY"

No. 193.

Q. When did this Frank Roethle and Company commence to do business at Koepenick? A. Sometime during the winter of 1900, I don't know just the date.

Q. And what business were they in, what did they do? A. Logging.

Q. Did they own any plant there? A. No they did not own the saw-mill, they had it leased I understand.

Q. What mill were they operating? A. The Wisconsin Realty Company's mill.

Q. In other words, the old Sherry mill? A. Yes sir.

Q. Do I understand that this is the only mill at Koepenick? A. Yes sir.

Q. How long did they operate that mill? A. Nearly three months, from the 10th. day of April until the 28th. day of June.

Q. Have they run or occupied that mill since? A. They have plained some lumber since.

Q. Who plained it, who did it? A. Roethle and Company.

394 Q. Who owns the plaining mill? A. The plaining mill is attached to the mill.

Q. When did they do that, do you remember? A. I think in November, 1900, and some in 1901.

Q. Did any of the members of the firm live at Koepenick? A. No sir, none that I know of.

Q. Are they up there at present? A. No sir.

Q. Who is running the mill now? A. It is not in operation.

Q. Who has got possession of it? A. Wunderlich.

Q. Who had possession of it this last year? A. The Forest Lumber Company.

Q. Do I understand you that the only business that they did there was in the winter of 1900? A. That is the only sawing that they ever did there.

Q. Do you know during the last three years that you have lived there, whether or not there was a firm there doing business by the name of Frank Ratthle and Company? A. I don't know.

of C. y.

Q. If there was a firm of that kind doing business there would you have known it? A. I think I would.

Q. You have never heard of any such firm? A. No sir.

Q. You have never heard of any such firm during all the time you were there? A. No sir.

Q. Could a firm by the name of Frank Ratthle and Company do business there without you knowing it?

Objected to. Question with-drawn.

Q. State whether or not for the last three years since you have been living there, you knew the different parties that did business there at Koepenick, in the way of lumber business. A. Yes sir.

Q. Now did anybody do business there by the name of Frank Ratthle and Company while you were there? A. No, to my knowledge, they did not.

Q. You knew who run the mill during the time you were there did you not? A. I knew who I was working for.

Q. Who were you working for? A. Frank Roethle and Company.

Q. How long did you work for them? A. Nearly two years.

Q. What did you do, what were your duties? A. I was foreman for nearly fourteen months; engineer one month and laborer the rest of the time.

Q. You also worked for them during the time they run the mill? A. Yes.

Q. How many residents are there at Koepenick? A. You mean at the present tim?

Q. Yes during your time. A. I could not say because they are coming and going all the time.

Q. I mean the people that have their homes there. A. There is only one there. Mr. Koepenick was the only one there when I came.

Q. How long did the Forest Lumber Company have charge of the same mill? A. I don't know when they took charge, they got through last Saturday.

Q. After Roethle and Company got through with the mill, who took possession of it then? A. The Forest Lumber Company.

Q. State whether or not they have operated the mill until Wunderlich took hold of it at the present time. Have they had continuous possession of it? A. Yes sir.

Q. Then during your time Frank Roethle and Company,

Forest Lumber Company and at the present time Mr. Wunderlich are the only ones that have had anything to do with that mill. A. That is all that I know of. Deposit D. Ma

Q. Could not anybody, without your knowing it, have possession of the mill?

Question objected to. Objection over-ruled.

395 A. They might have possession of the mill, they did not operate it.

Q. They did not operate it during that time? A. No sir.

Q. Now since you have been at Koepenick did you ever meet or hear of anybody or of a firm by the name of Frank Ratthle and Company? No sir.

Q. You heard of no such name there? A. No sir.

Q. Or of such company or concern? A. No sir, never heard of any.

Cross-Examination by Mr. Dorr.

Q. They say Mr. Malloy that Koepenick is a flag station, is there any post-office there? A. Yes sir.

Q. Who is the Post-master? A. Mr. Koepenick.

Q. Is he the only one that has a family there? A. No no now, there are three families there now.

Q. Is there a baording house there? A. Yes sir.

Q. How large in all is the population of Koepenick at the present time? A. Probably 20.

Q. Where does this saw-mill get its power, river? A. No sir.

Q. Steam? A. Yes sir.

Q. Where do they get the logs? A. From the camps around there.

Q. What knid of a country is it around there, agricultural or lumbering? A. Lumbering.

Q. How many lumber camps do you know of in the surrounding territory of Poepenick who use Koepenick as their Post-office? A. One at present.

Q. Might there be others without your knowledge? A Yes sir they might.

Q. Is Koepenick a shipping point? A. For what.

Q. For the manufactured products of the saw-mill and lumber camps. A. Yes it is a shipping point for lumber.

Q. You say that Frank Roethle and Company is not there now. A. No sir.

n of C. loy.

Q. Just when did they leave, when did they last do business there? A. He has about two car loads of lumber there yet, so I don't know whether he is through yet or not.

Q. Has he been up there himself recently? A. Not since April.

Q. Is there anybody working for him there that has charge of his lumber? A. I have charge of shipping his lumber.

Q. He pays you for that? A. No sir.

Q. You are doing it for nothing? A. Yes sir.

Q. How much lumber has he still got there? A. I don't know about three cars.

Q. How do you come to have possession of this check that you brought here? A. They were in the desk which I used when I took charge as foreman.

Q. Did you have charge of the business when he ceased active participation in business there? A. I did.

Q. Did your duties as foreman include the care of the office end of the business? A. Yes sir.

Q. Did you handle his correspondence? A. No, his mail that was directed to him at Koepenick was forwarded to him.

Q. You received the mail that was to be forwarded? A. No.

Q. Who did forward it? A. It was forwarded from Koepenick to him at Neenah.

Q. Forwarded by whom? A. By the post-master.

Q. Did you see much of the correspondence with relation to the business? A. No.

Q. The books and papers were kept there at Koepenick? A. Yes.

Q. You had charge of these? A. Yes sir.

Q. And I presume there was some correspondence included in these was there not? A. There was.

Q. Now Mr. Malloy while you had charge there as foreman of the books and papers and his office business, do you 396 ever remember of having seen his name misspelled? A. There were some circulars with his name misspelled.

Q. Did you ever see any business correspondence with his name mispelled?

Objected to. Objection overruled.

A. People that Mr. Roethle did business with generally had his name on stationery or cards.

Q. Tell how some of the misspelled names were spelled?

Objected to as immaterial and irrelevant.

A. R-a-t-t-h-l-e.

Q. Do you remember any others? A. Not now no.
Q. There probably were some though? A. Possibly.
Q. Do you still have some of those papers? A. I may have I would not be sure.
Q. When mail came to Koepenick addressed to the name of some Roethle, but misspelled, who was it given to? A. It was usually given to me.
Q. Did you open it? A. It was all open mail, not closed mail.
Q. You kept it and did not return it? A. No.
Q. Have you ever noticed Mr. Roethle's name being misspelled? A. Yes.
Q. It happens pretty frequently Does it not? A. Perhaps so.
Q. And have you ever heard it pronounced as if there were a long O in the first syllable? A. Yes sir.
Objected to as immaterial and irrelevant.
Q. You just heard Mr. Hoffman call it that did you not? A. Yes sir.
Q. What has been your experience Mr. Malloy with names in their construction having the letters o and e in, does not it often that people get the letter a substituted? A. I never noticed.
Q. I show you Ex. "A" Mr. Malloy, notice the signature there. If that e were written in the ordinary form, might it not be difficult to distinguish between the o and the a in ordinary hand-writing?
Objected to as being emmaterial and irrelevant.
A . I don't know.
Q. You would not want to say? A. No sir.
Q. When did you first hear about this case Mr. Malloy? A. Two weeks last Saturday.
Q. How did you hear it then? A. Mr. Hoffman told me there was going to be some kind of a trial.
Q. Did he write to you? A. No, I met him at Kempster.
Q. Have you had any correspondence with anybody else besides Mr. Hoffman about this' A. No have had none with him.
Q. Do you know R. G. Dun and Company? A. No.
Q. Are you in business in Koepenick yourself now? A. No.
Q. Who do you work for? A. The Forest Lumber Company.
Q. Have they said anything to you about this? A. No.

n of C. loy.

Q. Do you know whether they have any rating in the R. G. Dunn and Co's books? A. I don't.

Q. Were you sub-poenaed to come here? A. Yes.

Q. Did you come willingly? A. No I didn't.

Q. You don't know I suppose Mr. Malloy whether Mr. Roethle ever spelled his name in any other way than he now does or not? A. I don't.

397 Q. As far as you know Mr. Roethle's name is spelled R-o-e-t-h-l-e? A. Yes.

Q. Where is Mr. Roethle now? A. At Neenah, Wisconsin the last I heard from him.

Q. And you know of no other people of the same name or similar name in business at Koepenick? A. No there are only a few families at Koepenick. And only two business places there and no such person as Ratthle.

Q. You don't know whether there is any mail comes or is delivered to any such person there? A. I don't know anything about it.

Q. And you don't know what person might be conducting a lumber camp out in the woods and getting mail there? A. I would know if they were there.

Q. Quite sure you would? A. Yes.

Q. How would you know? A. I would see them.

Q. What is the next nearest Post-office or shipping point? A. Summitt Lake.

Q. How far from Koepenick? A. Three miles.

Q. How far is Koepenick from Antigo? A. 13 2/3 miles by Rail-road.

Q. I believe you said there people coming and going all the time? A. Not all the time.

Q. Are you quite positive there is no one in the surrounding territory with a name similar to Roethle, but spelled a little different? A. No there is not.

Q. Are you quite positive of that? A. I am.

Q. There are always quite a few coming and going are they not? A. Yes quite a few.

Re-direct by Mr. Hoffman.

Q. Now these men that come in and out are men that work in the woods, lumbering men? A. Yes or land lookers.

Q. Now all the lumbering that has been done in and around Koepenick was done for the mill at Koepenick was it not?

A. No there were some logs cut there in 1901 near the mill that was shipped out.

Q. Who did that cutting? A. McDougall.

Q. Was there any others shipped out during the last of the year? A. Yes

Q. Who did that? A. Rosil.

Q. They all shipped out logs? A. Yes and William Crampton shipped some.

Q. No more? A. That was all.

Q. The other logging that was done was done for the mill was it not? A. Yes sir.

Q. That was done by Roethle and Company in the spring and winter of 1900, and later by the Forest Lumber Company?

Objected to. Objection overruled.

A. Yes sir.

Ex. "A" offered in evidence.

Q. Who wrote this check? A. I got it from Frank Roethle and Company.

Q. Who wrote the check, Mr. Roethle himself? A. I don't know.

Q. Whose hand-writing is that do you know? A. I would not be sure, but I think it is his book-keeper.

Q. Who was his book-keeper's? A. Mr. Justman.

Q. Do you know Frank Roethle's writing, his own? A. That is his signature.

Q. Do you know whether he wrote that himself? A. Looks like his writing. Good in the Bank that is all I care. about.

Q. You say that is the signature that he used there? A. Yes.

Q. Is this billhead in your possession up there? A. Yes.

Q. Is that the bill head he used there at Koepenick?

398 By Mr. Dorr.

I object to all this as being improper in redirect examination, and to the introduction of this bill head as being generally inadmissable and particularly so at this time.

A. Yes sir.

Q. Ex. "B" that I show you is the bill head and the name used by Roethle and Company at Koepenick during the time they were in business there? A. All the time that I had charge of the business there it was.

By Mr. Dorr

I object to all the foregonig as incompetent, immaterial and improper as re-direct examination and move that it be stricken out.

of C. y.

By Mr. Dorr.

Q. You told us about some other logs being cut there by McDougall and others in this re-direct examination, and not a little while ago you said there were only two business places there, and as a matter of fact there were a number of others and that these people who cut logs constitute them. A. McDougall is not there at the present time.

Q. You said they were the only ones, McDougall and the ones you named before, the only people in business there? A. Yes.

C. D. MALLOY

399 Complainants then called as a witness in their behalf E. S. KOEPENICK, who being first duly sworn by me testified as follows:

400 IN THE CIRCUIT COURT OF THE UNITED STATES.

For the Northern District of Illinois,

Northern Division.

Mary B. Dunn, *et al.*, *Plaintiffs*,
vs.
Lumbermen's Credit Association *et al.*, *Defendants*.

n of E. penick.

E. S. KOEPENICK, being sworn, testifies as follows:

Direct Examination by Mr. Hoffman.

Q. Mr. Koepenick where do you live? A. At Koepenick, Langlade County Wisconsin.

Q. How long have you lived there Mr. Koepenick? A. I have lived there 12 years.

Q. What is your business up there? A. Farmer, logger, keep a store and Post-office.

Q. How long have you been Post-master at that station? A. 12 years.

Q. Then all the mail that comes in there goes through your hands? A. Yes sir.

Q. Do you remember of a concern doing business there by the name of Frank Roethle and Company? A. Yes sir.

Q. When were they there? A. They came there I guess it is three years ago, I guess it was the winter of 1899, I am not positive, it might have been 1900.

Q. How long were they there in business do you know? A. They got some of their business there yet.

Q. What was the extent of their business? A. They first started and bought out a certain fellow by the name of John Thauer; and Roethle and Company followed up this John Thauer. He started into log then Roethle and Company finished the logging and run the mill the summer following.

Q. How long did he run the mill? A. I think he run until the 4th. of July, 1900.

Q. That is the lumber they got there now? A. Yes part of it.

Q. Did he do any other business there except that one cut? A. No.

Q. That is the only business that he did there? A. Yes.

Q. Do you know how that company spelled its name? A. Yes sir.

Q. How? A. Frank's name is Frank X. Roethle.

Q. What was the firm name? A. Frank Roethle and Company.

Q. How do you know that was the name they used? A. To convince you I do know, there is business between him and myself.

Q. This is a letter received from him? A. Sure.

Q. Do you know this Frank Roethle personally? A. Sure.

Q. Do you know his signature when you see it? A. Sure.

Q. Is that the same writing? A. Sure, that is Frank's writing.

Q. Then the check marked Ex. "A" is Frank Roethle's writing? A. Yes that is my opinion.

Q. Was there a concern for the last three years doing business at Koepenick by the name of Frank Ratthle and Company?

Objected to. Objection over-ruled.

A. No not spelled that way.

Q. Now do you know there was no such concern doing business there?

Objected to. Objection over-ruled.

A. No spell it again.

401 Q. R-a-t-t-h-l-e and Company. A. No I have no knowledge of any such firm as Frank Ratthle and Company doing business there at any time since I lived there for the last twelve years.

Q. Now you say you are the Post-master there? A. Yes sir.

Q. And you handle all the mail that comes in there? A. Yes sir, and I am commercial advertiser there.

Q. You are commercial advertiser there? A. Yes sir.

Q. Then you look out for all the firms that do business there? A. Yes, sure.

Cross-Examination by Mr. Dorr.

Q. Who made up the firm of Roethle and Company? A. Frank Roethle and his partner's name is Hemme. That is the right way to spell it, but sometimes they put a y on the end instead of e.

Q. What do you mean Mr. Koepenick when you say you are commercial advertiser? A. I get sometimes questions wrote to me about what a person is worth.

Q. Then you mean that sometimes you are a correspondent for these commercial rating agencies? A. Yes.

Q. Did you ever act as correspondent that way for R. G. Dunn and Company? A. Sure.

Q. How recently have you done so? A. I do now.

Q. You make up their reports? A. Sure, if they ask me I make as close a report as I know how.

Q. Did you report for them in 1901? A. Yes sir I may have.

Q. Do you remember? A. I am sure I did. I have for the last 15 years.

Q. You have acted as their correspondent? A. Yes sir.

Q. Can you account then for the name of Frank Ratthle and Company in the R. G. Dunn book for July, 1901?

Objected to. Objection over-ruled.

A. No I don't know of anybody that spells his name that way.

Q. You were familiar with his name at that time? A. Yes I knew him from Dodge County and knew his family and have been acquainted with him from boy-hood.

Q. And you are quite positive you never sent him any such spelling as that? A. No I didn't send it.

Q. Do you know of any other such firm as that doing business there? A. No I never heard of that name. Depo S.

Q. Or any name similar to that? A. No.

Q. Was there anyone acting as correspondent of Dunn and Company that you know of? A. There might have been I don't know.

Q. You are the Post-master at Koepenick and the one that knows the most about the people there? A. Yes sir.

Q. And you know of no one who spells their name Ratthle? A. No I don't know of any one.

Q. You have pronounced the name of this Frank Roethle and Company as Roethle with a long O. A. Yes sir.

Q. Is that the English pronunciation? A. Yes sir, but there are a number of pronunciations.

Q. Has Roethle himself ever changed the pronunciation of his name? A. No, not that I know of.

Q. Do you know whether or not he has ever changed the spelling? A. Well he never spelled it any different with me.

Q. Do you know how long Roethle has been in this country? A. That I don't know; I have known he and the family for 20 years. He has some relatives living near Hartford, Wisconsin, now.

Q. Is he German born? A. I think so. His brother spells his name Roethle the same way.

Q. When Roethle was in business, or most actively in business there, did he receive much mail? A. Yes.

402 Q. What was done with his mail? A. He took it for a while and then when he was gone I used to forward it to Neenah, that was letters that were sealed, and letters of not much importance were delivered to Malloy.

Q. His foreman? A. Yes.

Q. Does he still get mail there? A. Sometimes, I forward some letters yet.

Q. How large a volumn of mail passes through your Post-office daily? A. Sometimes from 25 to 50 letters. When the camps run, like now, there is over 50.

Q. And you see every letter that goes through your office and attend to the mail yourself? A. Yes sir, only sometimes when I am away my wife attends to it.

Q. Now do you remember Mr. Koepenick whether or not any mail ever came to Mr. Roethle there upon which his name was spelled wrong? A. Have no knowledge of it.

Q. You don't remember? A. I don't remember, but I would say to the best of my knowledge there was not.

Q. It was not your mail and you did not care? A. Yes I would, but I don't think there was any such letters.

Q. It is just that you don't remember much about it? A. I don't remember of any that ever came any other way.

Q. When did you first hear of this case? A. Couple of days ago.

Q. Did you hear from Mr. Hoffman then? A. No the sheriff came up.

Q. Have Dunn and Company written you anything about this matter? A. No.

Q. Have their attorneys from Chicago? A. No sir.

Q. Had not heard anything about the case until you were sub-poenaed? A. No that is all.

Q. What is the next nearest Post-office? A. Summit Lake.

Re-direct Examination by Mr. Hoffman.

Q. For the last 12 years or more that you have been there as Post-master you do not remember of any firm by the name of Frank Ratthle and Company? A. No sir.

Q. Did you know all the men that did business at Koepenick? A. I ought to.

Q. You know that there has been no such firm as that doing business there? A. No not spelled that way.

E. S. KOEPENICK.

Mr. Dorr requests the addition of the following:

"Q. You mean all you know about? A. Yes, sir." as having been asked and answered by the stenographer.

Mr. Hoffman refusing to stipulate that such question was asked or answered, the request is denied & exception taken.

JNO. E. MARTIN,
Notary.

403 United States of America,
Northern District of Illinois } ss.
Northern Division,

I, John E. Martin, a Notary Public within and for Langlade County, in the State of Wisconsin, do hereby certify that the reason for taking the foregoing depositions is and the fact is that the testimony of the witnesses is material and

necessary for the complainants in the caption of the said depositions mentioned, and that the said witnesses and each of them, lives and at the time of the taking of the said depositions did live at Koepenick, in the County of Langdale and state of Wisconsin, more than one hundred miles (100) from the city of Chicago, in the County of Cook and State of Illinois, where the court at which said cause is to be tried was appointed by law to be held.

I further certify that notification of the time and place of the taking of the said depositions made and signed by the solicitors for the complainants was duly served on the solicitors for the defendants, to be present at the taking of the said depositions and to put interrogatories to the said witnesses if they might think fit.

I further certify that on the 3rd day of November 1902, I was attended at the place named in the said notification for the taking of the said deposition by Max Hoffman, solicitor for the complainants and Louis B. Dorr, solicitor for the defendants, and also by the witnesses C. D. Malloy and E. S. Koepenick who were of sound mind and lawful age; and the said witnesses were and each of them was by me carefully examined, cautioned and sworn to testify to the truth, the whole truth and nothing but the truth; that the said depositions were taken down in short hand by Miss Jo. Will-
404 iams, a stenographer, and by her reduced to typewriting under my personal supervision; that after carefully reading the same in my presence; that I retained the said depositions in my possession for the purpose of sealing and directing the same with this certificate of the reasons aforesaid for taking the said depositions with my own hand to the court for which the same were taken.

And I do further certify that I am not of counsel or attorney for either of the parties in the said depositions and caption named, or in any way interested in the event of the said cause in the said caption named.

In witness whereof I have hereto set my hand and affixed my Notarial seal this 3 day of Nov. in the year of our Lord one thousand nine hundred and two.

JNO. E. MARTIN,
(Seal) *Notary Public.*

My Commission expires Apr. 15, 1906.

405 State of Wisconsin }
Langlade County Circuit Court } ss.

The State of Wisconsin to C. D. Malloy and E. S. Koepenick:

We command you to be and appear before John E. Martin, Notary Public at his office Jaekel Building in the City of Antigo, in said County, on the 3d day of Nov. 1902 at 10 o'clock in the forenoon of said day, then and there to give evidence in a certain cause to be tried between Mary B. Dun & other executor & trustees under the will of Robert G. Dun, deceased, plaintiffs and Lumbermen's Credit Association, William C. Clancy & Burton W. Stadden, defendants on behalf of the plaintiffs being note heads of Frank Roethle & Co.

Hereof fail not., on pain of the penalty that will fall thereon.

Witness the Hon. John Goodland, Judge of said Court, this 30 day of Oct. A. D. 1902.

A. J. NOWOTNY,
(Seal) *Clerk.*

(Endorsed) Received and Filed Nov. 10, 1902, Opened at request of Compts' Solr. Marshall E. Sampsell, Clerk.

TESTIMONY TAKEN BEFORE, HENRY W. BISHOP, MASTER IN CHANCERY.

406 INDEX T. COMPLAINANTS' EXHIBITS, AND PAPERS IDENTIFIED.

Page		Nos.	Data Relating To
60	Identified	1-9	Tallapoosa Oil Co. Tallapoosa, Alabama.
60	Offered	10-13	Creola Lumber Co., Creola, Alabama.
62	"	14-17	Blacksher Lumber Co., Mobile Alabama.
67	"	18-20	Safford Lumber Co., Safford, Arizona.

68	Identified	21-32	Yellow Pine Lumber Co., Mobile, Alabama.
76	Offered	21-32	do do do do
77	"	33	St. Johns C. M. & M. I. Co., St. Johns, Ari.
78	"	34-36	McCoy & Trotter Monticello, Ark.
79	Identified	37-64	J. B. Gill Lumber Co., San Bernardino, Cal.
80	"	65	Bennett & Schulte, San Franciso, Cal.
81	"	66	Letter attached to No. 65.
82	Offered	68-69	Bush & Mallett Co., San Francisco, Cal.
83	Identified	70	J. R. Hamby, San Francisco, Cal.
84	Offered		Papers identified above as 38, 39, 40, 41, 42, 43, 45, 48, 49, 50, 51, 56, 57, 58 & 59.
86	Identified	71-72	McDonald Lumber Co., San Francisco, Cal.
86	"	73-74	Swain-Hadwen Mfg. Co., San Francisco, Cal.
90	Offered	73-74	do do do do
91	Identified	75	Cottoneva Lumber Co., San Jose, Cal.
92	"	76	A. Greeninger & Son, San Jose, Cal.
92	"	77-87	Larry Maroney, Cripple Creek, Colo.

407 INDEX TO COMP.S' EXHIBITS, ETC. CONT. 2.

Page		Nos.	Data Relating To
93	Identified	88-89	Henry Leopold, Denver, Colo.
93	Offered	90-93	J. M. Beattie & Co., Manzanola, Colo.
94	Identified	94-95	Hartford Box Co., Hartford, Conn.
94	Offered	96-97	D. E. Smith & Co., Milford, Conn.
95	"	98-101	Amos L.Hawley, Hawleyville,Conn.
96	Identified	102-106	Mystic Lumber Co., Mystic, Conn.
96	"	107-108	W. S. Robinson & Co., New Haven, Conn.

96	Offered	109-118	Waterbury Lumber & Coal Co., Waterbury, Conn.
97	Identified	119-122	Atlanta Basket & Veneer Co., Atlanta, Ga.
97	"	123	E.G.Willingham & Co., Atlanta, Ga.
98	Offered	124-125	J. H. McArthur, Montgomery, Ga.
99	"	126-127	W. A. Brannon, Moreland, Ga.
100	"	128-131	Ruby Creek Lumber Co., Boise, Idaho.
101	Identified	132-139	Shaw Lumber Co., Boise, Idaho.
101	"	140-150	W. E. Lyon & Co., Carthage, Ill.
101	"	151-153	Moline Scale Co., Rock Island, Ill.
101	"	154-157	MacKemer & Carlin, Fremont, Ill.
102	"	158-160	Wilkie Mfg. Co., Anderson, Ind.
102	"	161	W. H. Gillette, Bedford, Ind.
102	"	162-168	Johnson & Chenoweth, Shoals, Ind.
103	Offered	169-173	South Bend Wagon Co., South Bend, Ind.
103	Identified	174	E. & R. O. Jones, Vincennes, Ind.
105	Offered	175-184	P. J. Stelling & Co., Davenport, Iowa.

408 INDEX TO COMPS' EXHIBITS, ETC., CONT. 3.

Page		Nos.	Data Relating To
106	Identified	185	A. R. N. Wilkes, Centerville, La.
106	Offered	186-188	L. L. Mason, Portland, Me.
107	"	189	Morris & Lowe, Cordova, Md.
108	"	190-197	M. F. D'Arcy & Co., Boston, Mass.
109	Identified	198-199	James Allen, Dartmouth, Mass.
109	"	200-201	Florence Mfg. Co., Florence, Mass.
110	Offered	202-205	F. A. Whitney Carriage Co., Leominster, Mass
112	Offered	206-208	Clark & Co., Middleborough, Mass.
113	Identified	209-211	A. H. Ordway & Co., So. Framingham, Mass.
113	"	212-223	Howard Gaylord & Co., So.. Hadley Mass.

113	Offered	224-225	Booth & Luther, Taunton, Mass.
118	"	226-235	Hatch & Barnes, Worcester, Mass.
119	Identified	236-252	Otto Rosenfeld, Manistee, Mich.
119	Offered	253-255	C. H. Stevens & Co., Concord, N. H.
122	"	256-263	Proctor Bros. & Co., Nashua, N. H.
123	"	264	W. H. Ingersoll, Hamburg, N. Y.
124	Identified	265-267	Wm. L. Bullock, Mt. Holly, N. Y.
124	"	268-273	Hopkins & Williams Co., Trenton, N. J.
124	Offered	274-275	Biggs, Pollard & Groves, Espanola, N. M.
125	"	276-278	J. M. Cogo & Co., Port Jervis, N. Y.
126	"	279-285	Fore & Foster Co., Wilmington, N. C.
128	"	286-291	Stout & Holden, Bradford, Pa.
129	"	292-292B	Lancaster Planing Mill, Lancaster, Pa.

409 INDEX TO COMPS' EXHIBITS, ETC., CONT. 4.

Page.		Nos.	Data Relating To
130	Offered	293-295	Charles Crause, Littleston, Pa.
131	Identified	296-299	Skyles, Miller & Co., Martinsburg, Pa.
131	"	300-302	Portland Lumber Co., Portland, Pa.
131	Offered	303-310	L. S. Clough, Warren, Pa.
132	"	311-315	William Gilbane & Bro., Providence, R. I.
133	"	316-318	Blanton Stave & Lumber Co., Memphis, Tenn.
134	Identified	319-332	Champlain Lumber Co., Burlington, Vt.

of Will- ney.

410 United States of America.
Northern District of Illinois, } ss.
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES.

Northern District of Illinois,

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the will of Robert G. Dun, deceased.
vs.
The Lumbermen's Credit Association, William Clancy and Burton W. Stadden.

In Chancery.
No. 26143

Testimony taken before Henry W. Bishop, Master in Chancery, on Wednesday, the twenty-ninth day of January, A. D. 1902, at two o'clock in the afternoon.

Present:

John O'Connor, Esq., of Hoyne, O'Connor & Hoyne, Solicitors for Complainants:

Edwin F. Abbott, Esq., Of Counsel for Complainants: Messrs. Fred H. Atwood and Frank B. Pease, Solicitors for Defendants.

WILLIAM CLANCY Called as a witness on behalf of the complainants, being first duly sworn, was examined in chief by Mr. O'Connor and testified as follows:—

411 Q What is your name? A William Clancy.

Q What is your business? A President of the Lumbermen's Credit Association.

Q What is the business of that association? A Mercantile agency; for the lumber trade, more especially that line.

Q Does it publish any book? A Yes sir, it publishes a reference book in January and July of each year, and we fur-

nish special reports of a confidential nature to our subscribers.

Q What is the book you publish called? A Called the reference book of the Lumbermen's Credit Association.

Q This is a copy of it? this book which you filed in court, dated January, 1902, is it not? A I believe it is.

Q How long has the Lumbermen's Credit Association been engaged in the publication of that book? A The Lumberman's Credit Association was incorporated in 1893.

Q Has it been publishing that book since its incorporation? A Yes sir, or one similar to it.

Q Under the same name? A Yes sir.

Q Who are the stockholders of that company?

Mr. Pease: Objected to as immaterial, and on the ground that it is a personal and private matter that is not in any way involved in the issues in this case, and certainly not upon the matter now before the Master under this reference.

The Master: Go on subject to the objection.

412 A Burton W. Stadden, Mrs. William Clancy and myself.

Q How many shares of stock do you hold?

Mr. Pease: Objected to. I submit that this is entirely outside of the inquiry and of a personal nature.

Mr. O'Connor: This is to show the personal interest of Mr. Clancy and Mr. Stadden in this book, not only their interest as owners of the association but their interest as individuals.

The Master: You can go on, Mr. O'Connor.

Mr. O'Connor: It is not for the purpose of impeaching Mr. Clancy.

A I hold all but two shares.

Q How many shares are there? A Five hundred.

Q Who holds the remaining two shares? A Mr. Stadden and my wife.

Q They hold one each? A Yes.

Q How long have you been president of the company? A Ever since its organization.

Q Who is the secretary? A Mr. Stadden.

Q What is his name, please? A Burton W. Stadden.

Q How long has he been secretary of the company? A I think since its organization.

Q Who carried on the business of publishing that book before the incorporation of the Lumberman's Credit Association? A William Clancy.

h of Will-
ney.

Q You did individually? A From 1884 up to 1893, 413 as I remember it.

Q Do I understand you to say that this company was incorporated in 1890? A In 1893.

Q You were asked to produce certain books. Did you bring them? A I did not, they are not here, no sir.

Q You were subpoenaed to produce what you call "the red bound books" and "the black bound books," made up by the Lumberman's Credit Association between June 1900 and January 27, 1902.

Mr. Pease: We desire to suggest to the court that the books are not here, upon advice of counsel, and also the other private information called for, upon the ground that the information called for is confidential and within the rule of privleged communications, by reason of the fact that the Lumberman's Credit Association is a mercantile agency; that all the information gathered by it is confidential and is furnished only to its subscribers in a confidential manner, and therefore comes within the rule as to privileged communications, as has been held several times in cases in which the complainants themselves have been interested and made the objection, upon their motion; and the law in those cases would be the same in this.

The Master: The issue is whether the information as to the seventy-five names mentioned in this affidavit is derived from Dun & Co. or from original sources. That being the 414 issue—it is the only only issue in the case, so far as we have gone, isn't it?

Mr. O'Connor: Yes.

The Master: So far as that is concerned, I do not see how the issue can be determined except by prosecuting that inquiry. The statement of counsel for the defendant has justified the inquiry, I think; Mr. Pease says that these are derived from original sources of information. If they are, then there has been no piracy, so far as that is concerned; and upon the statement of counsel for defendant, and upon the insistence of counsel for the complainant, I think that the examination should proceed as furnishing the only method of determining the issue presented in the controversy so far as we have gone.

Mr. Abbott: We do not claim that this piracy is confined exclusively to copying our ratings; we claim that in making up a rating—we insist that this piracy is not alone confined

to copying our ratings arbitrarily, as you might say, but that they use our books improperly in determining, in connection even with the information that they have themselves, in fixing their ratings, which we will insist was an improper use of our book. Deposition of William C

The Master: It does really seem to me, Mr. Pease, that upon your statement that the course that you have pursued here, or claim to have pursued, is defensible upon the ground that you have made no use of any information except
415 that derived from original sources and belonging exclusively to you, and that you have not in the arrangement of your books employed any information which belongs to the complainant, I think it justifies this inquiry, I do not see how we can make any progress without it. You stated your position very clearly, I think I understood you.

Mr. Pease: You said "Had made no use," or "Had not made any use of information derived from the complainants' reference book in connection with other reference books. I stated to your Honor in opening that we claim that we not only had original sources of information upon which the ratings of the persons named in this list affixed to this affidavit were concerned, which I still adhere to, but that we claim we had made only a fair use of the information derived from complainants' book, such use as we are legally entitled to make.

The Master: Do you concede that you did make use of information contained in this book?

Mr. Pease: Not alone; we used information gathered from several books, one of which was complainants', in a very few instances.

The Master: There, that raises another reason why you cannot settle that issue except by producing the information to which you refer. I cannot see how we can make any progress except by the production of the books. Mr. O'Connor, you can go on with your inquiry.

416 Q Have you those books with you, Mr. Clancy? A No sir, they are not here.

Mr. O'Connor: We cannot proceed with the examination, if the Court please, without those books, without this information for which we called in the subpoena, as the Master now rules that we can proceed along this line, the witness I suppose ought to be compelled to produce them.

The Master: I will direct the books that are called for to be produced here tomorrow morning at eleven o'clock.

n of Will-ancy.

Mr. O'Connor: The books and this information. Mr. Pease tells me, if the Court please, that it would take nearly a week to collect all the information for which we have asked. As I told Mr. Pease on the telephone, we have no desire to subject his client to any unnecessary inconvenience, and I would suggest, Mr. Pease, that he collect all the information he can, or as many of them as he can, taking them in the order that they come, and produce as many as he can by tomorrow morning at eleven o'clock.

Mr. Pease: Relating to this affidavit?

Mr. O'Connor: No. all the information relating to these parties.

Mr. Pease: He cannot possibly do that.

Mr. O'Connor: Why not?

Mr. Pease: For want of time. You understand this
417 information is filed away, in with a mass of other information. It would be a physical and utter impossibility.

The Master: We will go ahead as far as we can.

Mr. Abbott: The red bound and black bound books can be produced.

The Master: Go on at eleven o'clock tomorrow.

Mr. Atwood: I understand that this applies now simply to these names in this affidavit? (Referring to the affidavit of the same one heretofore referred to by counsel.)

The Master: Yes.

Adjourned to 11.00 A. M. Thursday, January 30, 1902.

11.00 A. M. Thursday, January 30, 1902.

Continuation pursuant to adjournment.

Present:

Mr. Hoyne,
Mr. O'Connor,
Mr. Abbott,
Mr. Atwood,
Mr. Pease.

Mr. Pease: If the Master please, I desire to state that we have decided to produce the books—the red bound books and the black bound books and the information so far as they
418 relate to the names attached to the affidavit referred are concerned, and produce them, but shall limit their use on this hearing to these names.

Mr. O'Connor: I want here all the red bound books and black bound books. We do not want any limitation. Perhaps we

ought to state to the Court what the red bound books are. According to the defendants' own affidavits, the red bound books are—the red bound book for instance from which the defendant made up its January 1902 book, this book (Indicating copy of same filed with the Clerk of Court.) consists of the defendant's last preceding book, that is the July 1901 book, together with the ratings taken from two other reference books, one of which is R. G. Dun & Co's. reference book; in other words, the leaves of this book (Defendant's July book) are pasted on large sheets and opposite each name is put the ratings given to that name in R. G. Dun's book and such other reference book as is used, letters, figures and characters, those used in R. G. Dun & Co's. books and the other reference books from which they are taken. Now we want that entire book; we do no want to be limited, to be limited to any particular names; we want the Court to see how that book as a whole was made up; we are entitled to it.

The Master: Does the bill make an allegation in that line?

Mr. O'Connor: Yes, sir.

Mr. Pease: No, sir; I beg your pardon; the fact is 419 the allegations of the bill are of the most general character.

The Master: Is there a general allegation of misappropriation of matter and methods?

Mr. Pease: There is an allegation that our reference book is made up wholly or in grant part from the reference book of Dun & Company; that is the allegation, and the only allegation as I now recall the allegations of the bill.

The Master: Let me ask you a question. If these 75 names are accepted as examples of what would be done, then they would be entitled I think to a general reference to them, to all of them in the books.

Mr. O'Connor: They copied the ratings.

The Master: I do not care for any limitation in this inquiry as to what occurred in relation to these 75 names, but if there is a general averment in the bill that there has been a misappropriation of matter and methods by the defendant here, I do not see how you can try the issue except by the production of the books generally. There would not be any necessary limitation to the 75 names because they may be offered here simply as a sample of what generally occurred.

Mr. Pease: They are not so offered, if the Court please,

of Will-
ncy.

there is absolutely no statement to that effect in the af-
420 fidavit or in the bill or by counsel. We shall have to ask for a ruling on the matter and if necessary we shall ask to have it certified to Judge Kohlsaat, so far as the red bound books and the black bound books are concerned, except as to the reference therein contained to this list of names. So far as having the books offered in evidence generally, or having any use made of them, we do not propose to have counsel or employes of the Foster Agency go through these books and take any information from them, not the slightest. I say we have no objection to the examination as to these names, and the references to these books may be read into the record, but we are using the book daily, they are necessary and essential to the conduct and carrying on of our business.

Q Have you brought the red bound books and the black bound books for which we called?

Mr. Pease: Counsel will answer that. They are here so far as they relate to the January, 1902, edition.

Mr. O'Connor: We called for all of the red bound books and black bound books made up between June, 1900, and the 27th of January, 1902.

The Master: You can ask him to produce them.

Q Have you produced all of the red bound books and the black bound books made up during that period, June, 1900, to January 27, 1902? A My understanding yesterday was that you wanted simply the red bound books that referred to the January, 1902, book.

421 Q No, I distinctly stated that we wanted all the red bound books— A They are here.

Q —between June, 1900, and January 27, 1902? A I did not so understand you.

Mr. O'Connor: The subpoena reads as follows:

422 Mr. Pease: There is no objection to furnishing the other books, with the same limitations, that we furnish these, provided we have them. Mr. O'Connor says we have.

The Master: You may ask the witness to produce what you desire.

Q Will you produce the books and information called for in the subpoena that was served upon you, that is to say what are known in your office as the red bound books and the black bound books, made up between June 1900 and January 27, 1902, and all information in your possession or under your control or in the possession or under the control of the Lumbermen's Credit Association pertaining to the persons, firms

and corporations named in the list attached to the subpoena served upon. A I see no objection to producing what we can find. Deposi iam

Mr. Pease: So far as they pertain to the names in the subpoena, but for no other purpose or use.

Mr. O'Connor: We object to the limitation. The information is limited to the names mentioned in the subpoena, but the red bound books and black bound boods do not relate to any particular names.

The Master: Let the witness state whether he will endeavor to. I understand you to say you would, Mr. Clancy, will you do so?

The Witness: Yes, sir, according to counsel's state-
423 ment.

Q What do you mean by say "according to counsel's statement? Will you or will you not produce the books and information for which we have called? A I have no objection to bringing the books here to the Master's office, none whatever.

Q Very well, this is the proper place to bring them. When will you bring them?

Mr. Pease: We shall instruct the witness not to produce the books in the Master's office except with the limitation heretofore stated and with the distinct understanding that no other use shall be made of them.

Mr. Abbott: I do not see how you can limit us.

Mr. Pease: You want to go on a fishing expedition through our office and we do not propose to allow it unless the court says so. If the court says so, we shall submit with as much grace as possible.

Mr. Hoyne: It will be time enough to discuss that when the books are produced. hen the question will come up how far we are entitled to examine them.

The Master: I think it appears here sufficiently that the production of the books is necessary to this inquiry. I will direct the witness to produce the books.

Mr. Pease: You can proceed with the examination of the books that are here, if you desire.

Q What books have you here, where do they being? A The red bound books that are used in connection with the
424 January, 1902, book.

Q Only those? A That is all, yes, sir. I did not understand that you wanted any more.

Will- Q Let me see the red bound books that you have in court. A (Some handed counsel.)

Q Where is California? A We have no red bound book made for any state except those there, these are all of the books so far as I know of this character.

Q Where are the black bound books?

Mr. Pease: They are here.

Mr. O'Connor: We will take this book first. (Referring to the red bound books.)

Q The states you have produced is what you call the red bound book, is it? A Books.

Q What do you call the book which you have produced? A That is what we call the red bound book.

Q How do you distinguish it from other red bound books in your office? A Oh, simply the binding.

Q Is it the red bound book for any date? A I do not understand your question.

Q How would you distinguish this red bound book from other red bound books in your office? A I do not know as I could distinguish it.

Q This is the red bound book relating to a particular issue of your book, isn't it? A That is the understanding, yes, sir.

425 Q To what issue of your book does it relate? A According to my understanding it is to our January, 1902, book.

Q The book which you call it, which you have handed us consists of 22 parts, does it not? A I have no counted them.

Q Will you please count them and see if we are correct. A Twenty-two, yes, that is right.

Q Do those cover all the states which you revised to January, 1902, edition of your book? A No, sir.

Q What other states not mentioned in this book or not covered by this book did you revise in the 1902 edition of your book? A I could not name them from memory.

Q Can you tell us some of them? A Some of the states we have revised?

Q Yes. A We revised all our states, Mr. O'Connor.

Q In the January, 1902, edition? A Yes, sir, in the sense of a revision, yes, sir.

Q How does the revision of the states not covered by these books differ from the revision covered by these books?

A We transfer all information and data that we have in the files in our office into the other parts of our book. Depo ian

Q How does that differ from the revision that you made in these books? A It differs in this respect, that we do not send out special inquiry blanks to all of those towns.

Q Each of these parts with one or two exceptions covers a state, I should judge? A Yes, sir, I think so.

426 Q I notice the figures "12" with "01" with a line separating the figures "12" from the figures "01," what does that mean? A I don't know.

Q On the back of each of these books, or rather on the front of each? A That seems to be 12/01.

Q What does that mean? A I would suppose it meant December, 1901, I did not put it there so I don't know.

Q Do you distinguish this book by calling it the red bound book for December, 1901, or of December, 1901? A That is what I would suppose, that is about what they are.

Q That is the end of a period covered by the book I see, is it, by the revision of this book? A The end of the period?

Q Yes. A I don't know why at 12/01 was put there.

Q Do you know whether a similar date is on your other red bound books? A That I cannot tell.

Q How do you know then if you are not familiar with these red bound books whether these are all of the red bound books on which the January, 1902, edition of your book is based? A I would have to make a comparison or investigation of those to understand positively. It is my impression that they are all here; they were given to me as being all the books of that kind that were used on the January edition of the book.

Mr. Pease: That is your understanding, is it not?

The Witness: That is my understanding, yes, sir, of course I do not handle these books so I do not know

427 about them.

Q I notice the first state is Alabama, who made up that state in this book, that is who had charge of this section of the book, the section covering the state of Alabama in revision? A I think possibly Mr. Howard had charge of that.

Q Can you tell by the handwriting in it whether Mr. Howard had charge of it or not? A No, sir, his handwriting is not there.

Q Whose handwriting is this on the margin? A I do not know, sir.

Q What are these names and figures and letters on the margins of the first page of this part of the book? A Will you explain yourself a little more fully so I may know just what you want?

Q How is that book made up? A It appears to have names of our book, and it has other names in it.

Q By other names, you refer to names in the margin, do you not? A Yes, sir.

Q Who put thsoe names in that book? A I don't know.

Q Where was it done? A Why, I don't know positively.

Q Tell us your impression or idea? A It is my understanding that Mr. Thorbus done the work.

Q What is Mr. Thorbus' business? A He has a circular addressing business I believe.

Q Where? A I believe on Clark and Lake Street.

Q Where on Clark Street? A I think the number is 34.

428 Q 34 Clark Street, North or South Clark? A North.

Q North or south of the river? A It is north of the river.

Q Corner of Lake Street? A Oh, I see, it is corner of Lake Street, I am not sure about the number.

Q On which corner is it? A I think it is on the southwest corner, I think, I never was in the man's place so I don't know.

Q What is Mr. Thorbus' first name? A I think it is William C.

Q You stated that he was in the addressing business? A He is in the addressing circular line and such work, as I understand it, making up lists.

Q Who negotiated with him for the doing of this work? A For the Lumberman's Credit Association, I don't know.

Q Did you have no communication with him at all in regard to this work while it was being done? A Why, I think that I saw him after the work was started or practically finished.

Q Where did you see him? A Why, he was in our office.

Q Did you ever see him at his office? A No, sir.

Q Have you ever been in his office? A No, sir, not to my knowledge.

Q How often have you seen him in regard to that work?

A Why, in regard to that work I think we—

429 Q You personally. A I think I only saw him twice, that was in reference to some mistake that had been made in the work.

Q Did his interviews with you relate only to mistakes in the work? A That is right, yes, sir, as I remember it.

Q Didn't you know that he was doing this work while he was doing it? A No, I don't know that I knew who was doing it, I knew that he had done this work for us, yes, sir.

Q He had done similar work for you before, had he? A Yes, sir, I understood he had, that was my understanding, I had no dealings with him myself.

Q To what previous work do you refer? A I refer to the previous editions of this book.

Q That is the red bound book on which your July, 1901, book was based? A That is my understanding, not based, no, sir, not based, no sir.

Q Well, the red bound book referring to which your July, 1901, referred, is that correct? A I don't know.

Q How would you phrase the idea that I am trying to express? A I would simply say it was information that was transferred from agency books into this book.

Q I want to distinguish the red bound book, the previous red bound book on which he did the work, from this red bound book? A Well, I don't know how I could distinguish it.

Q Suppose I call it the red bound book for your 1901 book, is that correct? A For sake of argument you might call

430 it that.

Q You understand the book to which I would refer by using that language. Did you see the red bound book for July, 1901? A Which one?

Q The red bound book any part of it? A Oh, I expect I have, yes, sir.

Q Do you know where the work was done on it? A No, sir, I do not.

Q Weren't you consulted before the work was put in Thorbus' hands? A Why I might have been conferred with in regard to the matter and the work being done, yes, sir.

Q Who conferred with you? A Mr. Stadden probably.

Q Don't you know whether it was he or not? A Yes, I would say he probably did.

Q He had charge of that work, did he? A Well, at the time he had, I should say, practically the charge of it.

Q Who had charge of it when the red bound book for January, 1902, was done? A Well, I could not say.

Q Has not Mr. Stadden charge of that work? A Well, generally, yes, sir.

Q How long has he had charge of that work? A Well, of course he at times confers with me about it, I don't know as you could say the general charge.

Q Well, you and he together had charge of the making up of the red bound book? A Yes, more, or less, partly it was in his hands.

431 Q. How long have you and he together had charge of making the red bound book? A. Why, I could not answer that question.

Q. How long have you been making up the red bound book? A That I could not say.

Q Give us some idea. A About two years or three years possibly.

Q Do you mean to say, Mr. Clancy, that the defendants in this case, the Lumbermen's Credit Association or you and Mr. Stadden have not been making up the red bound books in this way for more than two or three years?

Mr. Pease: I object.

A I would not say.

Q Is "two or three years" as distinct an idea as you can give us of the time you have been making up red bound books? A It may have been longer, I would not say it was not.

Q You say that this information on the margin of the book is taken from reference books? A Yes, sir, so far as I know.

Q From what reference books was the information taken which appears in this red bound book?

Mr. Pease: I object, as not material to any issue in this case, except so far as it may refer to complainants' book.

Mr. O'Connor: We have a right I think to see just how this red bound book is made up. It is admitted that some of the information came from R. G. Dun & Company's

432 book. Now, we have a right to see just what it was.

The Master: You can go on with the examination.

(Question read.)

Mr. Pease: I shall instruct the witness not to answer, except so far as it may refer to the complainants' reference book.

Mr. O'Connor: We will reserve our right to insist upon the answer for the present, that is we will postpone for the present and reserve our right to insist upon an answer. Depos- iam

Q Opposite the name "H. A. Forester & Brother" I see two X's. What do those marks mean, what are they?

Mr. Pease: I object.

The Master: You may answer the question.

Mr. Pease: I instruct the witness not to answer the question.

Q Opposite the name "Kirkland A A." I see in lead pencil "L-4-X," am I correct about the figures and letters? A You mean at Addyville?

Q A. A. Kirkland? A Yes, "L-4-X."

Q What do "L-4-X" indicate?

Mr. Pease: I object and shall now insist that counsel have no right to make any use of this book further than for the purpose of referring to the names mentioned in this list attached to the affidavit.

Q Referring back to the two X's which appear oppo-
433 site the name of B. A. Forester & Brother, I will ask you who wrote those two X's? A I don't know.

Q It was employes of the Lumbermen's Credit Association, wasn't it? A I think not, no, sir.

Q Was it done in Thorbus' office? A I don't know personally.

Q It is part of the work done by Thorbus, isn't it? A It is supposed to be, yes, sir.

Q From what source were these two X's taken?

Mr. Pease: Objected to.

The Master: You may answer the question.

A I guess from the man's brain.

Q Did he use any books in connection with his work, any reference book? A He may have.

Q Don't you know whether he did or not?

Mr. Pease: I object; I wish to insist upon my understanding of our rights in this matter, namely, that they have no right to make any use of this red bound book except so far as the names mentioned in this affidavit are concerned.

The Master: I direct the witness to answer the question.

Mr. Pease: I instruct the witness not to answer the question.

Mr. O'Connor: Do you refuse to answer the question?

will- The Witness: Yes, on counsel's advice.

434 Q Opposite other names on this page I find other letters and figures in lead pencil; where was that work done? A Mr. O'Connor, I cannot state, I do not know.

Q Isn't it part of the work done by Thorbus? A I suppose it is, but I don't know.

Q From what source did he obtain those letters and figures?

Mr. Pease: We object.

The Master: I direct the witness to answer the question.

Mr. Pease: I instruct the witness not to answer the question.

Mr. O'Connor: Do you decline to answer?

The Witness: On counsel's advice, yes, sir.

Q In your affidavit filed in this case, you state that the Lumbermen's Credit Association uses a book commonly called the red bound book in which appear the names and ratings as published in the last edition of defendants' reference book and new names and ratings of other agencies. To what other agencies do you refer?

Mr. Pease: I object.

The Master: Answer the question.

Mr. Pease: I instruct the witness not to answer.

The Witness: On counsel's advice I decline to answer.

Q Do you know whether R. G. Dun & Company's reference book was one of the reference books which were

435 used in compiling this red bound book? A I thing probably it was.

Q Which edition of R. G. Dun & Company's reference book was so used? A I don't know, sir, positively, I never saw the book and don't know anything about it.

Q Did not Mr. Stadden consult with you before he made the arrangement with Thorbus for printing this or for revising this red bound book for the January, 1902, book? A I think not.

Q Do you mean to say that you had no knowledge of Thorbus doing this work until after Mr. Stadden had made the arrangement with him? A I supposed that he was doing it but I did not have any positive knowledge of it, no, sir.

Q Did not Mr. Stadden advise you that Thorbus was doing the work? A I don't know that he did, not on this edition no, sir.

Q When did you first learn of it to your recollection? A Why, I could not state just the time, I could not state, I know that when the books, as I remember it, when the books were delivered, why, it was discovered that some mistakes had been made and the matter was brought to my attention. That is about the first recollection I have of the matter.

Q Do I understand you to say that you had no knowledge that Thorbus was doing this work, or that this revision work was being done on this red bound book for January, 1902, until the the January, 1902, book had been issued?

Mr. Pease: Wait a minute I object to the question 436 because it is double.

Q. Do I understand you to say that you had no knowledge that this revision work was being done on the January, 1902, book until after the January, 1902, book had been issued?

Mr. Pease: Wait a minute, that question is unintelligible. We refer to the revision work as the work that is done resulting in a new edition of our book, that is the revision work.

Mr. O'Connor: What do you call this work done on the red bound books, what term do you apply to it?

Mr. Pease: I don't know as I apply any term to it.

Q What term do you apply to it, Mr. Clancy? A I would call it transfer work.

Q Transfer work, very well; do I understand you to say that you had no knowledge that any portion of the transfer work was being done for the January, 1902, book till after your January, 1902, book had been issued? A No, sir, you do not understand me right.

Q When did you first learn that this transfer work was being done on this book? A As I say, the best my memory serves me, it came to me, that is the matter was brought to my attention by the work being incorrect.

Q When? A Well, I could not tell you, I don't know just when it was, Mr. O'Connor. If you want to get at the time as to whether it was before the book came out, I say, yes, sir, it was before.

437 Q How long before the book came out? A Well, I should think probably it may have been two months.

Q. What was being done on the book at that time? A I don't know as we were doing anything particularly.

Q Was the book in the hands of the printer at that time?

of Willney.

A No, sir, the book itself was not in the hands of the printer, the book—what we call our book—was in the hands of the printer, yes, sir.

Q The final copy yhich you call the black bound book was in the hands of the printer at the time, was it? A No, sir.

Q What was in the hands of the printer at that time? A The type, the book itself.

Mr. Pease: Set up?

The Witness: Set up, yes, sir.

Q You now refer to the book which had been printed before, didn't you? A They kept the type standing of what you would call the July edition, we keep our type set up, yes, sir.

Q I am asking you at what stage this work on the January, 1902, had arrived when you first learned the transfer work was being done on this book? A I say it was about two months before—well, it was probably, the book was late in getting out, it was probably three months before the book was issued.

Q Had you put your final copy or final revised copy in the hands of the printer at that time? A No, sir.

438 Q You were still working on it? A Yes, sir, we were still working on it at that time, I cannot state positively now.

Q You say you first learned of it through some mistakes that Mr. Thorbus had made? A Yes, sir, that is the way if my memory serves me right.

Q Do you know how many mistakes there were to which your attention was called at that time? A Why, I think it was quite a general mistake.

Q What do you mean? A Well, they had made quite a general mistake in their work.

Q Was that mistake corrected? A Yes, sir.

Q You were still engaged on this transfer work at the time your attention was called to it, were you? A We were not engaged on any transfer work.

Q Well, was Thorbus still engaged on any transfer work at the time your attention was called to it? A That I cannot tell positively, I don't know how far he had gotten along with the work, I don't just remember whether he had gone very far with the work or not, I did not have a great deal to do with this work, as I have said before I had very little to do with it.

Q He did all of this transfer work, as I understand you? A I don't know that he did, I don't know that he did any of it.

Q I am not referring to Thorbus personally, I am referring to him or his employes. He or his employes did
439 this transfer work? A It is my understanding he was employed by us to do certain transfer work for us.

Q It was this transfer work, wasn't it? A I think it was, that is my understanding.

Q Why do you use the word "transfer"?

Mr. Pease: Objected to, it is immaterial why we use certain language.

The Master: Answer the question.

A Why, simply transferirng names or ratings.

Q From what to what? A From agency books.

Q To this book? A Into our transfer book or red bound book.

Q Where are the ratings in this book that are transferred from agency books? A Why, they show right here, it shows for itself right there.

Q To what do you refer? I want the record to show. You must mention specifically? A Well, we would say here "Andalusia" Lumber Company" for instance, "Manufacturers of Yellow Pine Lumber A-1". Here are two ratings, or three ratings transferred.

Q What is the first rating? A The first rating is A-1.

Q You are now referring to their rating? A Yes, sir.

Q That is your own rating? A Yes, sir.

Q That is the rating that appeared in your last preceding book? A Yes, sir. The other is "D-2".

Q That was taken from a reference book, was it?
440 A I suppose it was, that was my understanding.

Q Is there any other rating there? A "P-B".

Q Where was that taken from?

Mr. Pease: I object.

Q Was that taken from a reference book? A I expect it was.

Q What is the first name that appears on that page, the first page of Alabama? A B. A. Forester & Brother.

Q What ratings appear opposite that name? A A dash and two crosses.

Q What do these two crosses indicate?

Mr. Pease: I object, it is the same question he asked once before.

n of Will-
ney.

Mr. O'Connor: I insist upon an answer.
The Master: You may answer.
Mr. Pease: I will instruct the witness not to answer.
The Witness: I refuse to answer upon counsel's advice.
Q Were any ratings on that page taken from R. G. Dun & Company's reference book? A Judging from the letters, they probably were.
Q What ones?
The Witness: Excuse me, what was your question?
(Question read.)
Q What one on that page was taken from R. G. Dun
441 & Company's book? A "L-4".
Q Opposite what name? A A. A. Kirkland. G. A. Tod, M, I don't know whether this is or not, I am not sure; if you had your key it would be better if you would use your key.
(The key of R. G. Dun & Company is here placed before the witness.)
A (Continuing.) R. J. Langston.
Q What rating? A M. Murder Creek Lumber Company.
Q Is there any figure? A No, sir, just M.
Q Give us the figures wherever they appear. A I will give it to you just as it is here. "Murder Creek Lumber Company K-3 1/2". "Weaver Brothers F-3". "Beach Brothers, F-3." "W. W. Curry, Jr., J-3 1/2". "Tallapoosa Oil Company D + 1 1/2". "Ira W. Rhodes, H-3 1/2". "Andalusia Lumber Company, D + 2". "J. A. Briswood, G-4". "Walter & Harps, K 3 1/2". I think that is all of the names that appear on that page.
Q How do you distinguish R. G. Dun & Company's ratings from the other ratings that appear on that page? A Why by these letters.
Q Does any other agency use those letters? A I think all the agencies do.
Q Then how do you distinguish R. G. Dun & Company's ratings from the ratings of other agencies? A More particularly by the key, that is the credit key, and referring to the key here.
442 Q I do not understand you quite clearly, Mr. Clancy. Does Bradstreet, for instance, use the same letters as R. G. Dun & Company? A I think they do use the same letters.
Q Then if the ratings of any other agency appear on that

page, using the same letters or some of the same letters as R. G. Dun & Company use, how do you distinguish R. G. Dun & Company's ratings from the ratings of this other agency? A They would be distinguished by their key.

Q In what way? A Why the key shows the credit ratings and the actual ratings.

Q But would not Bradstreet's key show the ratings, explain those ratings? A Sure.

Q Very well, then how could you distinguish Bradstreet's ratings from R. G. Dun & Company's ratings where both use letters, the same letters? A Why, I think Bradstreet in connection with their credits use a letter instead of a figure.

Q Then R. G. Dun & Company are the only agency that use figures in connection with letters? A I think not, I think there are other agencies that use them.

Q In making up this transfer book or red bound book, did you use or refer to any other agency book that used figures in connection with letters except R. G. Dun & Company's reference book? A Did the people making this up?

Q Yes. A Read the question.

(Question read.)

A Well, the people making up this transfer book I 443 don't think did.

Q Then in making up that transfer book R. G. Dun & Company's reference book is the only reference book to which reference was made that used figures in connection with letters? A So far as I know, if I understand your question.

Q And you distinguish R. G. Dun & Company's ratings by the fact that the figures are connected with letters in the ratings? A Yes, more particularly, yes, sir.

Q Is there any other way in which you can discover their ratings? Are there cases where no figures are used or only letters are used, where you can distinguish their ratings from other ratings? A Well, there appear R. G. Dun & Company's ratings in here without any credit ratings at all.

Q How do you distinguish them from other ratings? A I don't know as you could positively distinguish them, only you might infer that they were, that is all, I guess, the Bradstreet people use an M in their key. A party might make a mistake and put an M in this book that was from the Bradstreet book, we do not know positively.

of Willancy.

Q In what way would you infer that it was Dun & Company's and not Bradstreet's, for instance, where the letter M appears? A More particularly we would infer that according to the credit rating.

Q Explain yourself a little more fully. A For instance, "3 1/2" as you have here, according to this key here—
444 well, it would be very hard to explain it according to the key, it has a very wide range, it refers to people worth $20,000.00 here and refers to people, giving some credit to people worth only financially $500.00.

Q Then how would you know it was R. G. Dun & Company's? A Why, simply by just simply guessing at it, that is all, that would be all we could go by, we would not know positively that it was Dun's rating.

Q The page which we have been discussing is the first page that appears in the section covering Alabama, is it not? A This is Alabama, page 1.

Recess till 2 P. M.

2 P. M. Continuation after recess.

Present:

Mr. O'Connor,
Mr. Abbott,
Mr. Atwood,
Mr. Pease.

Direct Examination of Mr. Clancy Continued by Mr. O'Connor:

Q Mr. Clancy you testified this morning in regard to R. G. Dun & Company's ratings on page 1 of the section covering Alabama. R. G. Dun & Company's ratings run all through this red bound book in the same way, do they
445 not? A Why, they probably are in the book, I don't know that they run in the same way.

Q Don't they run all through it? We don't care about taking up each page in succession? A That is my understanding, that their ratings, so far as they go, are in those books.

Q Where double columns, double ratings appear, those two ratings besides your own appear opposite a name, do R. G. Dun & Company's ratings appear in any particular order in this book? A Not that I know of.

Q Before Thorbus began to make up this red bound book

or transfer book, as you call it, for you, who made the transfer books for you?

Mr. Pease: I object; it is immaterial, indefinite as to time, and covering a period not in question here.

Q To be a little more definite as to time, to satisfy counsel, where was the last preceding book, before Thorbus began to make the red bound books for you made?

Mr. Pease: I still object for the same reason, as covering a period prior to the issue of any edition of the reference book of defendants in question in this case. The reference books in question are January and July, 1901. The record is that Thorbus made them for the last two or three years.

Q. Thorbus, as I understand you, made only this and the preceding one; is that correct, Mr. Clancy? A I could not say positively.

446 Q Is not that your recollection? A Well, I could not say positively, I don't really know, I don't remember when he started.

Q Who does know? A Who does know?

Q Yes. A Why, possibly Mr. Stadden might know.

Q Who made the transfer book on which your January, 1901, edition is based?

Mr. Pease: I object, I object to the form of the question.

Q Who made the transfer book or red bound book for your January, 1901, edition?

Mr. Pease: That is about as bad.

A If that was the time before Mr. Thorbus started on the ork, the work was done as I understand by several different parties.

Q Where was it done?

Mr. Pease: I object if the Court please.

Mr. O'Connor: The witness is an extremely unwilling witness as the Court can see.

Mr. Pease: Oh, no, he is not an unwilling witness, he is president of this defendant company, employing between thirty and forty employes and it is ridiculous to assume that he is familiar with all the details with reference to any department of the work.

The Master: Mr. Pease, Mr. Clancy can state if he knows.

447 Q Where was it done?

Mr. Pease: I submit that it is immaterial where it was done.

The Master: Well you may answer.

of Willey.

A I don't know, it was probably done at the homes of these different people.

Q Who were those people? A At that time? On the January, 1901, book?

Q Yes They were employes of the Lumberman's Credit Association, weren't they? A I think not; there may have been possibly some of the work done by them, but as far as my recollection serves me they were not.

Q Was not Mr. Wright one of them? A I do not know that Mr. Wright was doing the work personally, no, his wife had something to do with the work.

Q He took it home with him, did he not? A That is my understanding, I had nothing to do with delivering him the work.

Q All you know is that he took some of it home, you do not know who did the work at home? A No, I do not.

Q What other employes of the Lumberman's Credit Association took this same work home? A I don't know of anyone.

Q Do you know whether Mr. Howard did any of the work? A No, I don't think Mr. Howard did.

Q Do you know whether Miss Moore did or not? A No, I don't know whether she did any or not.

448 Q Would you swear that she did not?

Mr. Pease: Objection.

Mr. O'Connor: I simply want to know if the witness is positive or not.

A I am not positive, I cannot tell you what I don't know.

Q I do not ask you to tell me what you don't know, all I want to know about this question is whether you are positive or not? A I do not know, I could not tell you whether she did or not.

Q Who employed the outside persons to do the work on that book? A I suppose it was a sort of general employment, I don't know just how it was arranged at the time, whether I had to do with it or whether Mr. Stadden had to do with it.

Q Can you name some of the persons who worked on the book at that time? A To my knowledge?

Q Yes. A No, sir, I cannot.

Q The work as I understand you was done by the persons at home was it? A I suppose so, yes, sir.

Q It was not done in your office, was it? A There may have been some of it done in our office.

Q Can you recall the names of any of the employes who did the work in your office? A No, sir, I cannot.

Q How was the work assigned to the different persons who did it? A Will you kindly explain your question.

Q All the work was not given to one person of course, was it? A No, sir.

449 Q It was distributed among the different persons? A Yes, sir.

Q How was it distributed? A Probably a state or several states might be given to a person.

Q Given to each person? A Yes, sir.

Q Was R. G. Dun & Company's reference book used in connection with that work? A I expect probably it was.

Q In what way was it used in connection with that work? A Why, in transferring the ratings from their book into this transfer book.

Q What ratings were transferred from R. G. Dun & Company's book into that transfer book? A Why, I suppose such ratings as appear in the book.

Q That is all the ratings that appear in R. G. Dun & Company's book in connection with the names that appear in your book? A Yes, sir, relating to the lumber trade.

Q If any new names connected with the lumber trade appeared in R. G. Dun & Company's book which did not appear in your book, what was done with them? A Probably they would be transferred to this transfer book.

Q To your book, to your transfer or red bound book? A Yes, sir.

Mr. Pease: This all appears by the affidavits; I do not know how much better it is to get it out in this way.

450 Q How was R. G. Dun & Company's book used by the employes for that purpose, that is, was the book used as an entirety or was it used in parts? A I do not just understand the question.

Mr. Atwood: This relates to the one prior to Thorbus' connection?

Mr. O'Connor: Yes.

(Question read.)

A It was divided up into states, I believe.

Q That is the book was taken apart? A Yes, sir, that is about it.

Q Has the Lumberman's Credit Association ever been a subscriber to R. G. Dun & Company's book? A Not to my knowledge.

Will- Q Have you or Mr. Stadden ever been a subscriber to R. G. Dun & Company's books? A No, sir.

Q Where did the Lumberman's Credit Association procure R. G. Dun & Company's book, or how did the Lumberman's Credit Association procure R. G. Dun & Company's book for the purpose of transferring ratings from it to your red bound book?

Mr. Pease: We object for the reason that it is wholly immaterial and incompetent.

Mr. Atwood: It appears it was there and was used in this way and so far as the inquiry in this case is concerned I do not see how it can have any bearing whatever whether obtained from Dun & Company or some subscriber.

451 The Master: You may answer the question.

A Why, it was borrowed.

Q From whom?

Mr. Pease: Same objection.

The Witness: I do not care to answer.

Mr. O'Connor: I think we are entitled to an answer.

Mr. Pease: I do not see how it is material, if the Court please.

The Master: Answer the question.

The Witness: Do I have to answer that? I do not want to bring anybody else into this controversy.

Mr. Pease: I will instruct the witness not to answer at present. I do not see how that is material; we will have to go to the court on this record any way.

Q Did you ever obtain a book for that purpose from Albert E. Gamet?

Mr. Pease: I object for the same reasons; there is only one issue in this matter.

Mr. O'Connor: That is all and this evidence is on this issue.

The Master: I instruct the witness to answer the question.

Mr. Pease: I instruct the witness not to answer.

Mr. O'Connor: Do you decline to answer?

The Witness: I do under counsel's advice.

Q Did you not procure R. G. Dun & Company's book
452 from Albert E. Gamet under an arrangement with him by which he was to subscribe for the book and give you the use of it, and you were to pay the whole or a part of the subscription?

Mr. Pease: That is objected to for the same reasons.

Mr. O'Connor: Do you decline to answer?

The witness: I decline to answer, yes, sir.

Q Have you ever procured any of R. G. Dun & Company's reference books from D. L. Brady, secretary of the Mutual Benefit Union, for the purpose of obtaining information from them?

Mr. Pease: Same objection.

Mr. O'Connor: Do you decline to answer?

The Witness: Yes, under advice of counsel.

Q You say that when you used R. G. Dun & Company's book you took it apart? Who took it apart? A I suppose the binder took it apart.

Q What was the name of the binder? A I don't remember.

Q Do you know where his place of business is? A No, sir.

Q Did you ever know who he was or where his place of business was? A I would not say I never knew but I cannot tell you at this time.

Q Have you forgotten it? A Yes, sir, I have, if I knew.

Q Under whose instructions did he take it apart? A Possibly mine, or Mr. Stadden's, I don't know just at this time which one.

453 Q Do you remember that you ever gave him instructions to take it apart? A I do not think that I ever have, no, sir.

Q Mr. Stadden you think is the person who gave the instructions to him? A I don't know whether he did or not.

Q Did I understand you to say that it was either you or Mr. Stadden? A It might have been.

Q Is there any other person in your office who might have given him instruction? A It might have been by letter or the boy might.

Q Would the boy of his own motion give such orders without instructions from your office? A I think not, I think it would be probably by letter.

Q Who would write the letter? A Well, as I say, it might have been possibly myself or Mr. Stadden, I do not know.

Q The instructions in whatever form they were given, Mr. Clancy, they would come from you or Mr. Stadden, wouldn't they? A They would come from the office.

will- Q And if they came from the office, they would come from you or Mr. Stadden, wouldn't they? A I would not say that, there may have been somebody else delegated to write the letter.

Q I do not refer to the party who carried the letter or delivered the verbal message but the person or original source, prime source or head source from which the instructions emanated? A Do you mean the authority?

454 Yes. A Yes, probably from Mr. Stadden or myself, one or the other.

Q What instructions were given to him with reference to taking the book apart? A The instructions would be, if any, to just simply take it apart.

Q By states? A And bind it up loose in manila sheets.

Q That is it was to be taken apart in sections, each section to consist of a state? A Yes, sir.

Q And to be bound in manila paper? In a temporary binding of manila paper? A Yes, sir.

Q What was the purpose of the temporary binding? A Simply to keep a state together.

Q The states could be kept together without the binding, couldn't they? A Not very well, when a book is taken apart the sheets will be apt to tear apart.

Q Was not the purpose of the temporary binding to preserve the sheets and to keep them from becoming soiled? A Not that I know of, keep them in shape to be conveniently handled and put back.

Q. Was the name of the binder Volkert? A I think there was a man, now that you mention the name, that did do some work for us of that kind.

Q F. M. Volkert, 85 Fifth Avenue, is not that the man who did that work? A Well, of course, as I say, positively I could not tell, but there was a man on Fifth Avenue—you are talking about this work?

455 Q No, I am asking about the book, the red bound book, for your January, 1901, book? A I cannot tell whether Volkert did it or not.

Mr. Pease: It all relates to that 1901 book.

Q After R. G. Dun & Company's book was used, that is after you got through with the use of it, what was done with it? A Why, it was rebound.

Q By whom? A Probably by the same party who made up the other bindings.

Q That is, it was restored to its original condition, wasn't it? A Well, hardly, it could hardly be restored to its original condition, it could not be that. Depos iam

Q Why not? A Because it would show that it had been apart, by its use.

Q But so far as it was possible to do it, it was restored to its original condition, wasn't it? A Yes, practically.

Q Wasn't the binder instructed to restore it to its original condition as carefully as he could? A He was instructed to put it back in the shape it was originally, as near as he could.

Q Have you brought with you all information in the possession of the Lumberman's Credit Association with reference to the Tallapoosa Oil Company of Alexander, Alabama? A I believe I have what was given to me as coming from our files. I do not know whether it is all of it or not.

Q May I see it?

456 Mr. Atwood: The first one on the list?

Mr. O'Connor: Yes.

Q Have you got that? A I have it, yes.

Q Will you let me see it, Mr. Clancy? A (Papers handed counsel by witness.)

Q The original correspondence which you have handed me is all dated in November, 1901, the rest consisting of reports made up in your own office I should judge, seems to be based upon information received from your correspondents. Where is that information upon which these reports are based? A Why, I don't know as we would have that now.

Q Don't you preserve all the information you obtain? A Not always, no, sir, not always, after it is written up and placed in our files as original matter, we do not preserve our files always, some of them are destroyed, the accumulation is great and we frequently destroy them except as to personal statements, we try to keep those.

Q Do you destroy all except personal statements, all except those? A Yes, sir, at particular times.

Q At what particular times? A Possibly once in three or four or fives years.

Q When did you destroy the last? A I think possibly we destroyed a lot of matter in 1895 or '96.

Q Have you destroyed anything since 1895 or '96? A Not that I know of.

Wil- Q This is dated June—the earliest of this is dated
457 June, 1901? A Yes, sir.

Q Where is that information? A That is made up from original matter.

Q Where is it? A I did not look for that, I supposed this would be sufficient to cover your wants.

Q Where is the original matter on which this is based? A I could not tell you where it is today.

Q Have you it in your possession? A We may have, I could not tell you, we may be able to find it but it would necessitate our going to a great deal of trouble to locate those records of that character. I might explain to you Mr. O'Connor, that it is written up on special information received, you see, direct during the year, and that kind of stuff we do not keep, or expect to keep more than to lay them aside and possibly never refer to them again.

Q Is the information upon which these reports are based still preserved or has it been destroyed? A That I could not tell you, we have not looked for that particular information.

Mr. Atwood: That is transferred on this card?

The Witness: That is made up from the original data received from the Tallapoosa Oil Company of our correspondent or subscriber as the case may be and is our original files, the same as were sent to the Dun Agency.

Mr. O'Connor: We offer these red bound books in evidence.

458 Mr. Atwood: We object.

(Said red bound books covered the following states, a volume to each, except New York which was comprised in two volumes: Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Louisiana, Maine, Maryland, Massachusetts, Missouri, New Jersey, New Hampshire, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia.)

Mr. Atwood: Do I understand that that one in reference to Tallapoosa (Referring to the card report in papers last produced relating to the Tallapoosa Oil Company.) is introduced?

Mr. O'Connor: Not yet.

Mr. Pease: We would like to have the Master know somethink about what our original information is. Here is the first name on our list they accuse us of pirating and in which

the letters appear to be the same. We have here the original information from our correspondents upon which our rating is based and which I think the Master ought to look over. Deposition

Mr. O'Connor: The Master can see; we do not offer it in evidence.

Mr. Abbott: The name identifies it.

Mr. O'Connor: The name identifies it.

Adjourned to 2 P. M., Friday, January 31, 1902.

459 2.00 P. M. Friday, January 31, 1902.

Continuation pursuant to adjournment.

Present:

Mr. Hoyne,
Mr. O'Connor,
Mr. Pease.

WILLIAM CLANCY,

Direct Examination Continued by Mr. O'Connor:

Mr. Pease: With reference to these reports, if the Court please, we would like to have them offerd in evidence as they are called for an produced by counsel.

Mr. O'Connor: You cannot force us to try our case according to your methods, Mr. Pease.

Q Mr. Clancy, the first part of this information relating to the Creole Lumber Company seems to be dated October 1, 1901. Is that correct? A That is right, yes, sir.

Q Is that the first time you received any information regarding the Creole Lumber Company, October, 1901? A Not that I know of, no, sir.

Q Do you know whether it is or not? A I do not know.

Q Can you tell from your records if you have any other information? A We may have.

Q Relating to this case? A We may have possibly, I cannot tell you.

Q Have you made a search for any other information?
460 We call for all the information relating to the Creole Lumber Company. A There is some information in counsel's hands.

Q Well, have you any other information except what you have handed to us? A That I cannot tell you, I have not looked it up.

Q Haven't you made a search for all the information in the possession of the Lumberman's Credit Association relating to the Creole Lumber Company? A I have asked for the information.

Q Have you caused search to be made for all the information relating to that? A I answered the question, yes, sir.

Q And that is all that can be found in the office of the Lumberman's Credit Association? A That is all that has been handed me, yes, sir.

Q From this information it would appear that the first information you received regarding that concern you received in October, 1901? A This report is dated October, 1901.

Q That is the first time you received any information regarding that concern? A I would not say it was, no, sir.

Q Well, please tell us when you received the first information regarding that concern. A I do not know.

Q Would not these reports show it? A Why, we may have other data in our files.

Q But you have made a search for other information and could not find it? A I have not, no, sir.

Q You caused a search to be made— A Yes, sir.

461 Q —and it could not be found? A I don't know whether any could be found or not.

Q Have you directed a search to be made for all information regarding that concern? A Yes, sir.

Q And this is all the information that can be found in your office? A This is all the information that has been given to me, I don't know whether we can find any more or not, Mr. O'Connor.

Mr. O'Connor: If the court please, I think that we would only lose time by taking up these matters only a part at a time; I think that Mr. Clancy ought to make a thorough search of his office for all the information in the possession or under the control of the Lumberman's credit Association relating to these names mentioned in the list which we served upon him, so that when he comes to the court he can state positively whether there is any other information than that produced in court relating to these names or not. I do not want the witness to answer a question by saying that there may be other information but he doesn't know whether there is or not. We want a definite answer from him whether there is or not.

Mr. Pease: That would be practically impossible for any living man or mortal to ascertain, from the fact that this de-

fendant association receives daily anywhere from 500 to a thousand letters and communications, and necessarily
462 there after a time the information is culled out and filed away in boxes and stored, and in other instances it is destroyed.

Mr. O'Connor: Nothing of that kind has been done, the witness stated, since 1895.

Mr. Pease: The witness is entirely mistaken as to that matter; that only goes to show that he is not familiar with the details of his office and cannot possibly keep track of it all. There was considerable information destroyed between 30 and 60 days ago. It would require years almost to make a systematic examination or investigation of the files and records and papers pertaining to this business so that any person could state positively that it was all the information in the office, and it would be in some instances impossible to determine whether it was earlier or not.

Mr. O'Connor: The witness stated in his affidavit that all the information was preserved, that all the information relating to this business was preserved.

Mr. Pease: For a time.

The Master: I suppose the best way is for the witness to be asked to make the examination and then let him state what the result of that effort is.

Mr. Pease: If counsel would confine their inquiry between certain dates it would be better.

Q Mr. Clancy, was Kentucky one of the states you revised when preparing your January, 1902, book? A I don't know, I think not, I think by referring to these
463 books you can tell.

Q I notice it is not among these 22 books that you produced. A I think not.

Mr. O'Connor: If the court please, I would suggest that we take an adjournment till Monday afternoon at two o'clock, and in the meantime let Mr. Clancy make a search for the information upon which these card reports are based, and we will see if we cannot get somebody to be present at the next session to examine these reports and he will probably enable us to save a good deal of time.

The Master: Mr. O'Connor, if you will just ask Mr. Clancy the question.

Q Mr. Clancy, will you make a search for all other information in the possession or under the control of the Lumber-

of Willcy.

man's Credit Association relating to the names mentioned in the list that we gave you, and particularly the information upon which these card reports are based? A Yes, sir, I will have such a search made.

Q For the information upon which the cards are based? A We will do the best we can.

Mr. Pease: We will try and get it for you; I think we can get it.

Adjourned to 2 P. M. Monday, February 3, 1902.

2 P. M. Monday, February 3, 1902.
Adjourned to 11:00 A. M., Thursday, February 6, 1902.

464 11:00 A. M. Thursday, February 6, 1902.
Adjourned to 11:00 A. M., Friday, February 7, 1902.

11:00 A. M., Friday, February 7, 1902.
Adjourned to 11:00 A. M. Tuesday, February 11, 1902.

11:00 A. M., Tuesday, February 11, 1902.
Adjourned to 2.00 P. M. Wednesday, February 12, 1902.

2.00 P. M. Wednesday, February 12, 1902.
Continuation pursuant to adjournment.

Present:
Mr. Hoyne;
Mr. O'Connor;
Mr. Abbott;
Mr. Pease;
Mr. Fred W. Wright of the Foster Agency.

WILLIAM CLANCY,

Direct Examination Resumed by Mr. O'Connor.

Q Have you made a further search since the last hearing for all information in the possession or under the control of the Lumbermen's Credit Association with reference to the names mentioned in the list attached to Prudence's affidavit?

A Yes, sir, I have had a search made.

465 Q Have you found all the information? A Yes, sir, I am ready to produce the information.

Q Let me see all the information relating to the Tallapoosa Oil Company.

Mr. Pease: Now, if the Court please, I understand this Mr. Wright is in the employ of the Foster Agency; we are

not particularly surprised at his appearance here, but we shall object and refuse to introduce or produce any of our papers or documents to which he shall have the least access. The Foster Agency is our competitor and we think that it is going entirely beyond the province of a justifiable practice to submit our information, which your Honor will understand is confidential, of a confidential nature, all of it, and I think the authorities would even justify us in refusing to produce it for the inspection of counsel, the authorities holding that information of the character named can only be compelled to be produced for the inspection of the Master or the court, who will determine from a personal inspection of it whether it is competent or material to the issues. We certainly shall not allow Mr. Wright to have anything to do with our papers.

Mr. O'Connor: I have brought Mr. Wright to aid me in the examination of the information that shall be produced, to save time and to be sure that no imposition is practiced upon us. Some papers are handed to us called "reports"; they purport to be founded upon information which is
466 not produced; Mr. Wright can tell us at a glance probably whether that information is correct or not and how it was formed, how it was made, and I simply want Mr. Wright's assistance in this case. He cannot get any information from these reports, and nobody knows it better than the defendants themselves that will be of any service to the Foster Agency. The Foster Agency's book has been issued, it was issued (six months) before the Lumbermen's Credit Association's book was issued and no book will be issued for the next six months, and Mr. Wright knows all about these reports, he has gone over them while in the service of the Lumbermen's Credit Association, so that there is nothing in the reports that he does not know the general character of. It would be an impossibility for him to carry away anything in his mind, if he attempted to do it, but there is nothing in these reports that could be of service to the Foster Agency, and in my mind it is simply an effort upon the attorney's part to avoid a thorough investigation of this matter. I have a right I think to call upon Mr. Wright or any other person to assist me in sifting this evidence.

Mr. Pease: We are not going to produce these papers for the inspection of Mr. Wright. We will allow the court or the Master to inspect all of them, or Mr. O'Connor, but we

of Will-
ncy.

will not allow Mr. Wright or any other employe of the
467 Foster Agency. This whole thing is simply and solely a fishing expedition from start to finish.

Mr. O'Connor: That will be determined a good deal better when we reach the end of the case, when the court renders its decision in the case.

The Master: Mr. O'Connor, do you propose to call Mr. Wright as a witness?

Mr. O'Connor Yes, sir.

The Master Well, you can go on, Mr. O'Connor, with the examination till you reach the point where you propose to call Mr. Wright as a witness.

Q Mr. Clancy, will you produce all the information in the possession or under the control of the Lumbermen's Credit Association relating to the Tallapoosa Oil Company of Alexander City, Alabama. A It is here.

Q Will you hand it to me?

Mr. Pease: I will instruct the witness not to hand it to Mr. O'Connor so long as Mr. Wright is here. I am willing to hand it to Mr. O'Connor, but I want to say to Mr. O'Connor that I want Mr. O'Connor's statement to me that he will not allow Mr. Wright to examine these papers.

Mr. O'Connor: I want to show them to Mr. Wright and consult with him about the papers that will be handed me.

Mr. Pease: I will instruct the witness not to produce them; I do not propose to have Mr. Wright look at them.

The Master: The Master rules that Mr. Wright is not
468 entitled to examine the papers unless they are introduced in evidence and he is called as a witness, when he may be examined upon them.

Mr. O'Connor: Exception.

(Mr. Wright withdraws from the room.)

The Master: You can go on with your examination, Mr. O'Connor.

Q Will you please hand me the Tallapoosa Oil Company papers. A. Yes, sir. (Papers handed counsel.)

Mr. Abbott: Will you hand me the next one, relating to the Creola Lumber Company of Creola, Alabama.

(Same handed to Mr. Abbott by witness.)

Q A part of this information is pasted onto card board and is what I supposed you would call a report, is it not? A That is our office copy of the report, yes, sir.

Q What has become of the original? A You have them in your possession.

Q The original report? A Yes, sir. (Indicating papers just handed counsel.)

Q The portion of this office file under date of July 17, 1900, begins "Our correspondent writes" and so forth. Where is the letter to which this refers? A In your possession.

Q Identify it; will you please show it to me? (Handing papers back to witness who indicates a letter.)

Q It is based upon this statement that is endorsed on the back "Received July 17, 1900,", is it? A That is my judgment yes, sir.

469 Mr. Pease: Supposing you have those marked for identification, wouldn't it be better? I would like to have them marked for identification; I suggest that we mark them by number, numerically.

(Said papers marked by the reporter "1" to "9", both inclusive, for identification.)

Q A great portion of the information which you have produced in regard to the Creola Lumber Company seems to consist of two parts, one purporting to be based upon a statement dated January 29, 1901, and the other purporting to be based upon a statement made by the bank when consulted on or about February 6, 1901, I suppose. Where is the statement of February 6, 1901? A Which one is that, Mr. O'Connor?

Q The portion under that date? (Handing papers to witness.) A Isn't it there?

Q It does not seem to be? A They probably have not been able to find it.

Q You made a search for it? A Yes, sir, I made a search for it.

Q The information which you have produced is all the information which you could find in your office with reference to this Lumber Company? A Yes, sir, a search was made, a thorough search was made.

Mr. O'Connor: We offer these papers in evidence with reference to the Creola Lumber Company.

(Said papers marked Complainants' Exhibits 10 to 13 inclusive, and are in words and figures as follows, to wit)

470 Q Will you let us have all the information you have brought with reference to the Blacksher Company, Mobile, Alabama? A (Witness hands papers to counsel.)

Mr. Abbott: The Yellow Pine Lumber Company, if you please, Mr. Clancy, of Mobile.

n of Will-
ancy.

The Witness: (Handing papers.) There are some on both parties, Blacksher and the Yellow Pine.

Mr. Pease: On the same paper?

The Witness: Yes.

Q This report dated "7/19/01" seems to be incomplete, Mr. Clancy, where is the rest of it? A That is all there was of that report.

Q There seems to be an erasure in it; do you know what was erased? A Why, it was simply "R. G. Dun & Company reports" so and so.

Q Dun & Company reports so and so? A Yes, sir.

Q When was this erased? A I erased it myself.

Q When? A Oh, maybe ten days ago.

Q Do you remember what Dun's rating as stated in this letter was? A I don't remember exactly, I think it said something like $400,000.00 or something of that kind.

Q Who wrote this report? A Mr. McFall, our traveler.

Q Is he now in your employ? A Yes, sir.

Q This is all the information that you are able to find with reference to the Blacksher Company, was it? A There are several sheets there that refer to the Blacksher Com-
471 pany, they all refer more or less to that company.

Mr. O'Connor: We offer these in evidence.

(Said sheets marked Complainants' Exhibits 14, 15, 16 and 17 respectively, and are in words and figures as follows, to wit:)

472 Q Will you please let us have the information relating to the Andalusia Lumber Company, it is one of the last names I mentioned.

Mr. Pease: What do you mean?

Mr. O'Connor: Now, I want the rest of the Alabama names that I handed you a few days ago.

Mr. Pease: We have not them here, we are going to furnish the 75 names first and then see if we will furnish any more.

Q Did you make a search for the information in the possession or under the control of the Lumberman's Credit Association with reference to the Andalusia Lumber Company, Andalusia, Alabama? A A search is being made for that.

Q For the list of names I made last?

Mr. Pease: I have not had time to take it up. I have the list of the 75 names you would go through first.

Q Will you please complete your examination so that you can produce those names tomorrow?

Mr. Pease: Just a minute, Mr. Witness, it is not necessary for the witness to make any statement, I suppose?

Mr. O'Connor: Yes, I want to know if the witness will produce those papers at the next hearing or not, because I would not have delayed this matter as long as I have if I had not felt counsel would produce the papers.

473 Mr. Pease: Let us cross one bridge at a time. We have been notified, subpoenaed and required to produce information here with reference to a certain list of names; we have that information here. A day or two ago Mr. O'Connor sent to our office another list of names asking if we would get up that information, I think it was Saturday, personally I have been in court every minute this week till this morning, and it may not be necessary to produce any more names when we get through with these.

Mr. O'Connor: We asked Mr. Clancy through his counsel to produce in addition to the four Alabama names mentioned in the affidavit of Mr. Prudence about 15 to 20 other names, that is the information relating to them, in other words we have called for about 20 to 25 names altogether in the whole State of Alabama.

Mr. Pease: Do you propose to continue this all Winter by calling for 15 or 20 names in the remaining states of the United States?

Mr. O'Connor: Yes.

Mr. Abbott: We will give you more than that right now.

Mr. Pease: You will not get them.

Mr. Abbott: We know what we will ask for.

The Master: I do not suppose that counsel will be required in the inquiry to follow any particular order for
474 the production but is entitled to the production of such information as he desires.

Mr. Pease: All I can say in answer to counsel's request is that we are not now prepared to produce the information called for as to the last mentioned list of names. As to what I may be compelled to do next week I cannot now say/. We have here the information of these 75 names which Mr. O'Connor was very strenuous and insistent in requiring we should produce, in the order in which they have been here submitted to us, and we have complied to his demands in that respect and are prepared to furnish the information in the order just exactly as he requested it. Now, as to anything further I cannot say what we will do.

of Willey.

Mr. O'Connor: We object to defendants' counsel dictating how we shall introduce our evidence. We have a perfect right to manage the case in our own way.

The Master: Go on, Mr. O'Connor.

Q Have you brought any information relating to the list of Alabama names we delivered to your counsel, Mr. Pease, last Saturday? A Not that I know of.

Mr. Pease: We submit, if the court please, that the defendant has some rights in the manner of proceeding. We have been subpoenaed and the record shows that the examination for the present shall be confined to this list of 73 names, or this list of names, we have complied with it,
475 we are ready to comply with it. Now, why should counsel suddenly change his plan of procedure and call for something that we have had no previous notice of till Saturday? Mr. Clancy tells you that the papers are now being looked up.

Q How, long will it take you to collect the information relating to these names, Mr. Clancy? A I could not tell you.

Q Will you be able to produce them at the next hearing? A Tomorrow, I think not.

Q Tomorrow afternoon? A I think not, no, sir.

Q How long do you think it will take you to collect the information in reference to these names? A It might take three or four days, it might take a week, it might take longer.

Q To collect the information in your office relating to 15 names? A Well, in that respect, why, we have a mass of stuff, you know, it takes sometimes a long while to drive up a report and find it all.

Q Will you collect as much of the information relating to these names as you can and produce it at the next hearing of this case?

Mr. Pease: I will say that the witness will probably do that if I see fit to advise him to do it.

Q I would like to know now whether you will or not.

Mr. Pease: I will say now to counsel we will not produce any other information till this list is completed. For what reason should we be put to the labor of producing this
476 information and then not use it?

Mr. O'Connor: We are going to use it.

Mr. Pease: Then use it now.

Mr. O'Connor: No, that is the objection we make, we have the right to manage the case as we see fit.

Mr. Pease: We have nothing to say about what you shall do but have considerable to say about what we will do. Deposi iam

The Master: Answer the question, Mr. Witness.

A I refuse on counsel's advice.

Q Do you refuse to produce the information with reference to the list of names we furnished your counsel? A Yes, sir.

Mr. Pease: For the present, till you complete this examination.

Q Have you any information relating to the Safford Lumber Company, Safford, Arizona? A (Witness produces same and hands same to counsel.)

Q This is all the information that you could find with reference t othe Safford Lumber Company, was it? A That is all we found.

Mr. O'Connor: We offer that in evidence.

(Said papers marked Complainants' Exhibits 18, 19 and 20 respectively, and are in words and figures as follows, to wit:)

477 Mr. O'Connor: I will ask the reporter to mark the Yellow Pine Lumber Company papers for identification.

(Said papers stamped by the reporter consecutive numbers from "21" to "32" both inclusive.)

Q Will you please look at the part of the report relating to the Yellow Pine Lumber Company stamped on the back by the reporter for identification No. 21, and opposite to the name you will find "A A A" scratched out. What were those triple A's to indicate? A That in our own key would indicate over $100,000.00.

Q Did they have reference to your key? A I would suppose they did, yes, sir.

Q Who put those letters on that report? A I don't know about that.

Q When were they put on? A I could not tell you.

Q Were those letters on that report when that report was sent out by you? A They may have been.

Q Wasn't it your practice to send those reports to persons and to put the ratings on like the three A's? A In some cases we have done that.

Q On the report that you have sent out? A In some cases.

Q These reports were sent to your correspondents were they? A Yes, sir.

of Willey.

Q To get ratings on the persons named in the reports? A Yes, sir.

Q And those three A's may have been on the report
478 when it was sent to your correspondents? A They may have been, yes, sir.

Q Do you know who struck them out? A I would suppose the correspondent struck them out, yes, sir.

Q You do not know of your own knowledge, do you? A Why, only from the fact itself, it would indicate that to me.

Q To whom was this report sent, the one marked "21" on the back of it? A I believe it was sent to Toddsmyer & Mallette.

Q Where are they located? A At Mobile.

Q What is their business? A Attorneys at law.

Q Where did you get the three A's opposite the Yellow Pine Lumber Company? A I don't know, Mr. O'Connor.

Q Do you know whether the Yellow Pine Lumber had been reported in your book at three A's prior to the date of this report? A No, I do not.

Q Opposite the name of the Sullivan Timber Company I see four A's. You have never used four A's in your system of rating, have you? A Yes, sir, always.

Q Do you now use four A's? A Yes, sir.

Q Did not these three A's opposite the Yellow Pine Lumber Company have reference to the amount that concern was rated by other agencies? A I cannot tell you.

Q Who prepared this report in your office? A I do not know.

479 Q Can't you tell us what these different ratings, letters and figures, opposite each of these names referred to?

Mr. Pease: I object to the question. My objection is this, if the Master please, that they have no right to inquire as to any figures or letters that do not refer to the complainant's key.

Mr. O'Connor: We want to know wheher they do or not, we want to know exactly.

Mr. Pease: The ask that question, because it will be manifestly improper to allow counsel to prosecute an inquiry in reference to any other key or information which they are not interested in.

The Master: Answer the question.

Q What do the three letters A opposite the Yellow Pine Lumber Company indicate? A In our key $100,000.00.

Q No, what do they indicate here? A They would indicate $100,000.00 or over. Depos iam

Q To what do they refer? A They refer to the firm's standing.

Q As shown by what? A By information that we had in the office.

Q Do you mean to say that you intended to convey to your correspondent the impression that upon information in your office, in your possession, this concern ought to be rated at three A's? A As our understanding that they were probably entitled to a rating of three A's.

480 Q Had that concern ever been rated at three A's in your book? A I don't know whether it had or not.

Q You have not your book here for January, 1900, have you? A In the office here, no, sir.

Q You have furnished all the information in the possession or under the control of the Lumbermen's Credit Association with reference to the Yellow Pine Lumber Company, have you? A That is my understanding, yes, sir.

Q Isn't it a fact that prior to the earliest of these reports, that is prior to October, 1899, the Yellow Pine Lumber Company had been rated in your book at "C"? A The reports will show for themselves, Mr. O'Connor.

Q I mean your books, or book. A I have not the book here to refer to, I cannot tell you.

Q Do these letters three A's opposite the Yellow Pine Lumber Company, two A's opposite another, and one opposite another lumber company, and so on, these letters opposite the names indicate the ratings that are given to these names by other agency reports? A I could not say that they do in all cases, no, sir.

Q Can you point out the particular cases in this list that do refer to other agency reports? (Showing witness the sheets stamped for identification "21", "22" and "23".) A No, sir, I could not.

Q Can you point out the names or the ratings opposite the names, indicate the ratings based upon information in

481 your possession outside of agency reports, outside of agency books? A Reference books? From these blanks.

Q Yes. A No, sir, I could not.

Q In some of these cases if not in all of them, these numbers or ratings might refer to the ratings that are given to these names in other reference books of other agencies, might they not? A There might be cases of that kind.

of Willey.

Q And these may or may not be cases of that kind? A That is what I said, yes, sir.

Q What name do you give to these three papers marked for identification by the reporter as "21", "22" and "23"? A That is one of several kinds of revision blanks made.

Q You also sometimes call them inquiry sheets, do you not? A Well, that would be so.

Q They are sent to correspondents for the purpose of making inquiries, are they not? A That is right, yes, sir.

Q From what reference books did you obtain these ratings or any of them that were taken from reference books of other agencies?

Mr. Pease: I object, if the court please, on the ground that they have no right to that, that their inquiry should be confined to the reference book of R. G. Dun & Company; that is the only reference book in question in this case with which complainant is interested. They may use a dozen others and it would be immaterial.

Mr. O'Connor: We have the right to ascertain the 482 facts.

Mr. Pease: You have not unless it affects you.

Mr. O'Connor: Yes, we have, we have a right to have the facts before the court and not the mere conclusion of the witness.

Mr. Pease: I do not agree with counsel. The inquiry should be limited to the reference book of complainants. If any ratings were taken from their book, it would be a proper inquiry.

The Master: You can answer the question, please.

A I don't know whether there were any taken from agency books.

Q I understood you to say that these letters or figures or some of them indicated ratings that were shown by reference books of other agencies?

Mr. Pease: He did not say anything of the kind.

Mr. O'Connor: Let the witness testify.

A I do not remember making that statement.

Q What did you say about ratings taken from reference books of other agencies?

Mr. Pease: I object; the record shows.

Mr. O'Connor: Let the witness state.

Mr. Pease: You ask the witness what he said five minutes ago, that is not the proper way to conduct an examination. Let the reporter read what he said.

The Master: You may answer the question, that is Deposition
483 the easiest way out.

Mr. Pease: The court refuses my request to have the record read?

The Master: I think that the witness should answer the question as to what he intended to say and did say. The record may not be correct, he may desire to correct it.

Mr. Pease: Then I take it the witness or his counsel will ask that privilege.

The Master: You may answer the question.

A My answer, as I understand it, was that the letters on that blank were made up from information and data in our office.

Q Did that information and data include reference books of other agencies?

Mr. Pease: I object to the question unless it is confined to the reference book of the complainants. Mr. O'Connor is not interested in any other reference book.

The Master: You may answer the question.

A I cannot tell you.

Q Do not these letters and figures indicate ratings as shown by reference books of other agencies? A I do not know, I did not make that up so I don't know.

Q Don't you understand the papers of your own concern? A I cannot understand all the information that is on them from looking at them, no, sir, further than what is shown
484 by the letters.

Q Wasn't it the practice in your office to put opposite a name on inquiry sheets, or revision sheets as you call them, letters and figures to indicate ratings as shown by reference books of other agencies?

Mr. Pease: You call for the general custom, do you?

Mr. O'Connor: I object to counsel making constant interruptions; if the witness does not understand me he can say so, I think the question is plain.

A I said in some cases.

Mr. Pease: I do not want to be understood as being captious about this, but my position is this, Mr. O'Connor, in your question to establish a custom of our office, it must be a general custom, the question should be framed in that way.

Mr. O'Connor: I think I will give the witness a chance to explain himself if there is any mistake.

A Well, all I can say, Mr. O'Connor, as I understand you, is that these letters and figures opposite these names in some

Will- cases have reference to the ratings given to these names in reference books of other agencies.

Q But you cannot tell in each particular case? A I do not know that they have, myself, personally.

Q That is you cannot state whether they refer to the ratings shown in reference books of other agencies or not? A I do not know what.

485 Q When did you first begin to include Alabama in your reference book? A Well, I could not just say, Mr. O'Connor, right now, I would have to look the matter up.

Mr. O'Connor: We offer these in evidence.

(The papers heretofore identified as Nos. 21 to 32 both inclusive marked Complainants' Exhibits 21 to 32 respectively, both inclusive, and are in words and figures as follows, to wit:)

486 Q Please let us have all the information relating to the St. Johns Co-operative Mercantile & Manufacturing "Insts.", institutions, is it? (Of St. Johns, Arizona.)

(The witness here produces postal card which is marked for identification "33".)

Q What is the date of the receipt mark on this postal card? A I cannot determine that from the stamp, Mr. O'Connor. I might do so if I had a glass.

(Magnifying glass handed the witness.)

A (Continuing.) I cannot make it out.

Mr. O'Connor: We offer this postal marked by the reporter No. 33 in evidence.

(Said postal card marked Complainants' Exhibit 33 and is in words and figures as follows, to wit:)

487 Q Will you please produce all the information relating to McCoy & Trotter of Montecello, Arkansas. A (Same handed counsel.)

Mr. O'Connor: We offer these papers in evidence.

(Said papers marked Complainants' Exhibits 34, 35 and 36 and are in words and figures as follows, to wit:)

488 Q Will you please produce all the information with reference to the Standard Novelty Works. A Mr. Abbot has it.

Q Will you please produce all the information you have relating to the J. B. Gill Lumber Company of San Bernardino, California? A (Same handed counsel.)

Mr. O'Connor: I would like the reporter to mark for identification the papers relating to the Standard Novelty Works.

(Said papers marked For Identification Nos. "37" to "59" both inclusive.)

Mr. O'Connor: Please mark the papers relating to the J. B. Gill Lumber Company for identification.

(Said papers stamped by the reporter "60" to "64" both inclusive.)

Q Please let me have all the information relating to Bennett & Schuette of San Francisco, California. A (Papers handed counsel.)

Q Only the first of these sheets refers to Bennett & Schutte does it, Mr. Clancy? A I don't know.

Q Will you please look and see if the rest of the sheets do not refer to other parties? A Yes, sir, I think that is all.

Q Then will you please hand me only the first sheet, we do not want to encumber the record by introducing lots of papers that have no reference to the case. Hand me only the portion that refers to Bennett & Schutte, please. A 489 (Said paper handed counsel.)

(Said paper upon request of complainants' counsel stamped For Identification No. "65".)

Q On this sheet which the reporter has stamped on the back "65" for identification, opposite the name Bennett & Schutte I see the letter and figure "E 1. This is what you call the revision sheet, is it not? A Yes, sir.

Q It is a sheet sent out to your correspondent at San Francisco for the purpose of making inquiry of your correspondent with reference to particular names upon the paper, is it not? A Yes, sir.

Q Were those letters and figures that I have mentioned on the sheet when you sent it to your correspondent? A I would say not, no, sir.

Q Did you see this sheet when it was sent out? A I don't think I did, no, sir.

Q Then you do not know of your own knowledge whether these letters and figures were on the sheet or not? A I am simply judging from the writing all through the blank, the changes the correspondent has made.

Q Basing your judgment entirely that way? A Yes, sir.

Q What person in your employ sent out this blank? A I could not tell you.

Q When was this blank sent out? A It must have been sent out some time in March.

Q Of what year? A 1901.

Will- 490 Q When was it returned to you? A Judging from the letter attached to it, it was as shown by the receipt here, it was received April 22, 1901.

Q Let me see the letter, if you please. A (Same handed counsel after being detached from bunch of papers last referred to.)

Mr. O'Connor: Please mark that for identification.

(Said letter stamped "66" for identification.)

Q Let me have all the information relating to Bush & Mallett Company of San Francisco. A (Papers handed counsel.)

Q Please hand me only the part relating to them. A They are all fastened together. (Said bunch of papers separated and said single paper handed counsel, and upon his request stamped by the reporter for identification No. 67.)

Q Let me have all the information relating to William Crocker of San Francisco. A (Same handed counsel.)

Mr. O'Connor: Will the reporter please mark these papers for identification.

(Said papers stamped "68" and "69" by the reporter.)

Q Look at the paper that has been stamped by the reporter "69"; I see opposite certain names certain letters and figures, among them I see the letter "C" and the figure "1" opposite the name of William Crocker; were these letters and figures opposite that name when they were sent out to your correspondent? A I should think they were.

Q These letters and figures indicate the ratings given
491 to these parties in reference books of other agencies, do they not? A I cannot tell you.

Q Might they not have reference to the ratings given to these names in the reference books of other agencies? A It might be possible.

Q Do you know when William Crocker first appeared in your reference book? A No, I do not.

Q What is the date of this sheet which has been stamped by the reporter "68"? A That is a part of the blanks you have just taken apart, Mr. O'Connor.

Q What was the date of them, March, 1901, was it not, it was a part of this report dated March, 1901, was it not? (Referring to report stamped "65") A Yes, sir.

Mr. O'Connor: We offer these papers referring to William Crocker in evidence.

(Said papers marked Complainants' Exhibits 68 and 69 and are in words and figures as follows, to wit:)

492 Q Please let me have all the information relating to J. R. Hanify of San Francisco. A (Papers handed counsel.)

Q What is the date of this revision sheet relating to J. R. Hanify? A It is taken from the same information as the previous sheet.

Q Did it form a part of the report dated March, 1901, that has been stamped "65" for identification? A Yes, sir.

Mr. O'Connor: Mark that for identification.

(Said sheet relating to J. R. Hanify stamped "70" for identification.)

Q Will you please hand me all the information relating to the Standard Novelty Works. Please select the portion that relates to them. A (Said papers handed counsel.)

Q What is the date of this paper numbered by the reporter "43"? A That is October, 1899.

Q The numbers "6/99" in the upper lefthand corner represent the date, I suppose, June, 1889, do they not? A That is my understanding, yes, sir, June, 1899.

Q This paper or cardboard numbered by the reporter "59" refers to a statement made by C. W. Fo. have you that statement? A I think it is among the pap s.

Q It is this statement dated November, 1901, is it not? A The 5th day of November, 1901.

Mr. O'Connor: We offer in evidence the papers numbered 38, 39, 40, 41, 42, 43, 45, 48, 49, 50, 51, 56, 57, 58
493 and 59.

(Said papers marked respectively Complainants' Exhibits 38, 39, 40, 41, 42, 43, 45, 48, 49, 50, 51, 56, 57, 58 and 59, and are in words and figures as follows to wit:)

494 Mr. O'Connor: The irregularity of the numbering is due to the fact that the reporter by mistake numbered certain papers which had no reference to the parties about whom inquiry was made.

By agreement between counsel the papers offered in evidence and also the papers marked for identification at this session are withdrawn by defendants to be produced when called for.

Adjourned to 2:00 P. M., Thursday, February 13, 1902.

of Will-
ncy.

2:00 P. M., Thursday, February 13, 1902.
Continuation pursuant to adjournment.

Present:
Mr. O'Connor;
Mr. Abbott;
Mr. Pease.

WILLIAM CLANCY,

Direct Examination Resumed by Mr. O'Connor.

Q Have you got the information relating to the Alabama names I gave Mr. Pease on Saturday? A I have not brought any, no, sir.

Q Will you let me have all the information in the possession or under the control of the Lumbermen's Credit
495 Association with reference to the McDonald Lumber Company of San Francisco, California. A (Said papers handed counsel.)

Mr. O'Connor: Will you please mark those for identification.

(Said papers stamped by the reporter for identification "71" and "72.")

Q Let me have all the information in the possession or under the control of the Lumbermen's Credit Association relating to the Swaim-Hadwen Manufacturing Company of San Francisco. A (Same handed counsel.)

Mr. O'Connor: Mark those for identification.

(Said papers stamped for identification "73" and "74."

Q In this paper numbered by the reported "73" I notice the letter and figure "D 1" after the name Swain-Hadwen Manufacturing Company. Was that letter and figure on that paper at the time it was sent to your correspondent? A I don't know, Mr. O'Connor.

Q Where were they taken from? A I don't know.

Q It was the work of your office to attach such letters and figures to certain names on inquiries when they were sent out, was it not? A Not always, no, sir.

Q I am not asking whether it was your practice to attach the letter and figure to every name, but wasn't it your practice to attach letters and figures to some names on inquiries? A We attach our ratings to some names, yes, sir.

Q Were not those ratings taken from the red bound 496 book? A No, sir, not always.

Q Weren't they in some cases? A In some cases we have taken them from our red bound book.

Q In this case, "D 1", might not the rating have been taken from the red bound book?

Mr. Pease: Objected to as being indefinite, "might have been".

The Master: It seems to me the question is proper.

Mr. Pease: What do you mean by "taken from"?

Mr. O'Connor: Obtained from.

A No, sir, I do not think it could be.

Q Where was it obtained from? A I cannot tell you.

Q Where do you think it was obtained from?

Mr. Pease: I object.

Mr. O'Connor: I want to know if he has any opinion where it came from.

The Master: I think that is proper, Mr. Pease.

A I could not say, I had nothing to do with handling this blank and I could not tell you, it would be impossible for me to state where that rating came from.

Q Are you not familiar with the practice of your office? A Generally so, yes, sir.

Q You know, do you not, as in fact you have stated, as I understand your testimony, that when these revision sheets are sent out you frequently attach to names on them such letters and figures as indicate ratings, do you not? A 497 Yes, sir; we do at times, yes, sir.

Q Are they not generally taken from the red bound book? A Those ratings?

Q Yes. A Not these ratings, no, sir.

Q I mean ratings that you attach like this to names on the revision sheets before you send them out, ratings that you put in ink like this. A I do not just understand what you are getting at, Mr. O'Connor.

Q On these revision sheets when you send them out, there appear certain printed letters and figures, do there not? indicating ratings? A On the sheet there, yes, sir.

Q On your revision sheets are there not usually printed letters and figures opposite some of the names to indicate ratings? A Yes, sir.

Q Those printed letters and figures indicate the ratings given to the names in your last book, do they not, your last printed book? A The printed ratings?

of Willbey.

Q Yes. A Yes, sir.

Q In some cases you write in ink new ratings, letters and figures do you not, on the revision sheet before you send them out? A In some cases, yes, sir.

Q Are not those ratings taken from the red bound book?

Mr. Pease: Do you mean copied or transferred?

Q (Continuing.) Transferred from your red bound book? A The ratings?

Q Yes, the ratings that appear on the revision sheet
498 in ink before they are sent out? A Not as I understand your question, no, sir.

Q Where are they obtained from? A Why, we have ratings in the office that are attached to new names.

Q What is it? A That is we have ratings that have been gathered and data that has been gathered upon which ratings are based in the office at times.

Q Do you not in some cases obtain the ratings from your red bound book? A Do we take the ratings from it?

Q Do you not take some of the ratings written in ink on the revision sheets from the red bound book? A Not the ratings, no, sir/

Q Perhaps we do not understand each other as to the term "ratings". Take the letters "D 1" that is the rating? A "D 1" is the rating our company gives, yes, sir.

Q That is what you call a rating? A Yes, sir.

Q That rating appeared on your revision sheet before you sent it out to your correspondent? A I don't know.

Q What would you say about it? A I could not tell you.

Q It was your practice, wasn't it to write these in ink before you sent them out, did they appear in your revision sheet? A In some cases.

Q In those cases where they were on the revision sheet before you sent it out, were not these ratings taken from your red bound book? A No, sir, there were no ratings of that kind in the red bound book.

499 Q I now see where we differ; when I spoke of these ratings as taken from the red bound book, I do not mean the identical figures and letters, but the amounts indicated by the m. A Well, I do not know that the amounts would be the same, Mr. O'Connor.

Q But don't you know that in many cases they were based upon the ratings given in the red bound book? A They may have been in some cases.

Q And may not this "D 1" be based upon the rating given to that firm in the red bound book? A I don't know.

Q May it not have been? A It may be possible.

Q That is, in some cases where the rating is put in ink opposite a name on the revision sheet before you send it out, some of the ratings may have been based upon ratings given to those names in the reference books of other agencies as shown by your red book? A It is possible, yes, sir, in some cases.

Q What is the date of this paper numbered by the reporter "74"? A It is the same date as the other that you have had, I think you have kept all of that stuff.

Q Is that a part of the report that has been marked March, 1901? A Yes, sir.

Mr. O'Connor: We offer these in evidence.

(Said papers marked Complainants' Exhibit 73 and 74 and are in words and figures as follows, to wit:)

500 Mr. O'Connor: Whenever I call for all the information, I mean all the information in the possession or under the control of the Lumbermen's Credit Association in every case.

Q Let me have all the information relating to the Cottoneva Lumber Company of San Jose, California. A (Papers handed counsel.)

Mr. O'Connor: Mark that for identification.

(Said paper stamped by the reporter "75" for identification.)

Q In this paper numbered by the reporter "75" I notice a blue check mark opposite the name Cottoneva Lumber Company, who made that mark? A I did, sir, to call attention to the name that we were asking for in the blank.

Q That is the only paper on which I have noticed such a mark, I believe, Mr. Clancy. A There are some others here, I think.

Q The letter "D" there seems to be in a different handwriting from all the others. Who wrote that letter "D"? A it is all one handwriting so far as I can see.

Mr. Pease: Or so far as you know.

The Witness: As far as I know, yes, sir.

Q You did not send this original sheet out personally yourself? A No, sir.

Q And you did not receive it personally when it was returned? A No, sir, I expect not.

ha of Will- ney.

501 Q You never saw it till it was called for by us? A I think not.

Q What is the date of this paper, Mr. Clancy? A The date don't appear on here. But it covers the revision as I understand it of our January book.

Q January, 1902? A 1900.

Q January, 1900? A 1901 rather, that is my recollection.

Q When did you receive it? A This was probably for our July, 1901; I think we were revising for July, 1901.

Q Then you received it some time between July and January, 1901? A That is my impression, yes, sir, so far as I know.

Q There is nothing on the paper to indicate when you received it, is there? A Nothing particularly on the paper, no, sir, other than the date of the time the blanks were printed, showing that it was used about a certain time.

Q Let me have all the information relating to A. Greeninger & Son of San Jose, California. A (Paper handed counsel.)

Mr. O'Connor: Number that, if you please.

(Said paper stamped by the reporter No. 76.)

Q Let me have all the information relating to Larry Maroney of Cripple Creek, Colorado. A (Papers handed counsel.)

Mr. O'Connor: Mark those for identification.

(Said papers stamped for identification by the reporter Nos. "77" to "87" both inclusive.)

Q Let me have all the information relating to Henry
502 Leopold of Denver, Colorado. A (Papers handed counsel.)

Mr. O'Connor: Mark those for identification.

(Said papers stamped by the reporter "88" and "89".)

Q Let me have all the information relating to J. N. Beattie & Co. of Manzanola, Colorado. A (Papers handed counsel.)

Mr. O'Connor: We offer these in evidence.

(Said papers marked Complainants' Exhibits 90, 91, 92 and 93 respectively, and are in words and figures as follows, to wit:)

503 Q Let me have all the information relating to the Hartford Box Company of Hartford, Connecticut. A (Papers handed counse.)

Mr. O'Connor: Mark those for identification.

(Said papers stamped by the reported "94" and "95".)

Q Let me have all the information relating to D. E. Smith & Company of Milford, Connecticut. A (Papers handed counsel.)

Mr. O'Connor: Mark those for identification.

(Said papers stamped by the reporter "96" and "97".)

Mr. O'Connor: We offer these in evidence.

(Said papers last identified marked Complainants' Exhibits 96 and 97 respectively, and are in words and figures as follows, to wit:)

504 Q Let me have all the information relation to Amos L. Hawley, of Hawleyville, Connecticut. A (Papers handed counsel.)

Mr. O'Connor: We offer these in evidence.

(Said papers marked Complainants' Exhibits 98, 99, 100, 101, and are in words and figures as follows, to wit:)

505 Q Let me have all the information relating to the Mystic Lumber Company of Mystic, Connecticut. A (apers handed counsel.)

Mr. O'Connor: Mark those for identification.

(Said papers stamped by the reporter "102" to "106" both inclusive.)

Q Let me have all the information relating to W. S. Robinson & Company of New Haven, Connecticut. A (Papers handed counsel.)

Mr. O'Connor: Mark those for identification.

(Said papers stamped by the reporter "107" and "108".)

Q Let me have all the information relating to the Waterbury Lumber & Coal Company of Waterbury, Connecticut. A (Papers handed counsel.)

Mr. O'Connor: We offer these in evidence.

(Said papers marked Complainants' Exhibits 109 to 118 both inclusive, and are in words and figures as follows, to wit:)

506 Q Let me have all the information relating to the Atlanta Basket & Veneer Company, of East Point, Georgia. A (Papers handed counsel.)

Mr. O'Connor: Mark those for identification.

(Said papers stamped by the reporter "119" to "122" both inclusive.)

Q Please let me have all the information relating to E. G. Willingham & Company of Atlanta, Georgia. A (Papers handed counsel.)

Mr. O'Connor: Mark this for identification.

(Said paper stamped by the reporter "123".)

n of Willancey.

Q Mr. Clancy, I see no date on this paper numbered by the reporter "123", can you give me the date of it? A Not from memory, no, sir.

Q Can you in any way tell me the date of it? A We can ascertain it.

Q Have you any means at present of ascertaining it? A I have nothing here that would indicate the date of the blank unless it would be the ratings in the book, that might indicate the date we got it.

Q What does that blue check mark, blue cross opposite Willingham, E. G., & Co., indicate? A That is a mark I put there to just simply identify the name, that is all.

Mr. Pease: You mean to which the inquiry was directed?

The Witness: Yes, that is right.

507 Q Please let me have all the information relating to J. H. McArthur, Montgomery, Georgia. A (Papers handed counsel.)

Mr. O'Connor: We offer these in evidence.

(Said papers marked Complainants' Exhibits 124 and 125, and are in words and figures as follows, to wit:)

508 Q Please let me have all the information in relation to W. A. Brannon, of Moreland, Georgia. A (Papers handed counsel.)

Mr. O'Connor: We offer these in evidence.

(Said papers marked Complainants' Exhibits 126 and 127, and are in words and figures as follows, to wit:)

509 Mr. O'Connor: It is understood that each of these papers, all of these papers are offered in evidence only so far as they relate to the persons concerning whom the questions are directed. That applies to all papers here introduced and heretofore introduced, unless counsel states differently when making the offer.

Q Please let me have all the information relating to the Ruby Creek Lumber Company of Boise, Idaho. A (Papers handed counsel.)

Mr. O'Connor: We offer these in evidence.)

(Said papers marked Complainants' Exhibits 128, 129, 130, 131 respectively, and are in words and figures as follows, to wit:)

510 Q Please let me have all information in relation to the Shaw Lumber Company of Boise, Idaho. A (Papers handed counsel.)

Mr. O'Connor: Mark these for identification.

(Said papers stamped by the reporter "132" to "139" both inclusive.)

Q Please let me have all information in relation to W. E. Lyon & Co., Carthage, Illinois. A (Papers handed counsel.)

Mr. O'Connor: Mark these for identification.

(Said papers stamped by the reporter "140" to "150" both inclusive.

Q Please let me have all information relating to the Moline Scale Company, Rock Island, Illinois. A (Papers handed counsel.)

Mr. O'Connor: Mark these for identification.

(Said papers stamped by the reporter "151", "152" and "153".)

Q Please let me have all information relating to MacKemer & Carlin, Tremont, Illinois. A (Papers handed counsel.)

Mr. O'Connor: Mark there for idenntification.

(Said papers stamped by the reporter "154", "155" "156", "157" respectively.)

Q Please let me have all information in relation to the Wilkie Manufacturing Company, Anderson, Indiana. A (Papers handed counsel.)

Mr. O'Connor: Mark these for identification.

511 (Said papers stamped by the reporter "158", "159" and "160.)

Q Please let me have all information relating to W. H. Gillette, Bedford, Indiana. A (Papers handed counsel.)

Mr. O'Connor: Mark that for identification.

(Said paper stamped by the reporter No. "161".)

Q Please let me have all information relating to Johnson & Chenoweth, Shoals, Indiana. A (Papers handed counsel.)

Mr. O'Connor: Mark those for identifiaction.

(Said papers stamped by the reporter "162" to "168" both inclusive.)

Q Mr. Clancy, this report numbered by the reporter "168" refers to a report made by your correspondent. Where is your correspondent's report to which this report refers? A That does not seem to be among these papers of that date.

Q Where is the information upon which the report on paper numbered by the reporter "166" is founded or based? A Part of this data I expect would be about it, in this report.

Q But it does not all seem to be embodied in the other papers, Mr. Clancy, does it? A Well, he probably had some other data before him than what appears to be here, in making up the report.

Q Where is the other data? A It has not been found; we might be able to find it but I cannot tell; we have not found it.

512 Q Please let me have all information relating to the South Bend Wagon Company, South Bend, Indiana. A (Papers handed counsel.)

Mr. O'Connor: Mark these for identification.

(Said papers stamped by the reporter "169" to "173" both inclusive.)

Mr. O'Connor: We will offer these in evidence.

(Said papers marked Complainants' Exhibits 169 to 173 both inclusive, and are in words and figures as follows to wit:)

513 Q Please let me have all information in relation to E. & R. O. James of Vincennes, Indiana. A (Paper handed counsel.)

Mr. O'Connor: Mark this for identification.

(Said paper stamped by the reporter "174".)

By agreement of counsel the papers identified and offered in evidence at this and the preceding session are withdrawn by defendants, to be produced when called for.

Adjourned to 2:00 P. M., Friday, February 14, 1902.

514 2.00 P. M., Friday, February 14, 1902.

Continuation pursuant to adjournment.

Present:

Mr. O'Connor;
Mr. Abbott;
Mr. Pease.

WILLIAM CLANCY,

Direct Examination Resumed by Mr. O'Connor.

Q Let me have all the information relating to P. J. Stelling & Co., Davenport, Iowa. A (Papers handed counsel.)

Mr. O'Connor: We offer these in evidence.

(Said papers marked Complainants' Exhibits 175 to 184 both inclusive and are in words and figures as follows, to wit:)

515 Q Let me have all the information relating to A. R. N. Wilkes, Centerville, Louisiana. A (Paper handed counsel.)

Mr. O'Connor: Mark this for identification.

(Said paper marked for identification by the reporter "185".)

Q Let me have all the information relating to L. L. Mason, Portland, Maine. A (Papers handed counsel.)

Mr. O'Connor: We offer these in evidence.

(Said papers marked Complainants' Exhibits 186, 187, and 188 respectively, both inclusive, and are in words and figures as follows, to wit:)

516 Q Let me have all the information relating to Morris & Lowe, Cordova, Maryland. A (Paper handed counsel.)

Mr. O'Connor: Mark this for identification.

(Said paper marked for identification by the reporter "189".)

Q Mr. Clancy, in this paper numbered by the reporter "189" I notice under different headings what appear to be the letters "unk", what do they mean, unknown? A I would think probably that is what was intended, yes, sir.

Mr. O'Connor: I offer this paper in evidence.

(Said paper marked Complainants' Exhibit 189 and is in words and figures as follows, to wit:)

517 Q Let me have all the information relating to M. F. D'Arcy & Co., Boston, Massachusetts. A (Papers handed counsel.)

Mr. O'Connor: We offer these in evidence.

(Said papers marked Complainants' Exhibits 190 to 197, both inclusive and are in words and figures as follows, to wit.)

518 Q Mr. Clancy, when did you receive the paper numbered by the reporter "197"? A I think it is about two years ago.

Q Is there anything on it that would indicate when you received it? A Nothing on the paper but I know the writing, I know by whom the report was made.

Q You think you received it about two years ago? A Yes, sir, that is my recollection, I can give you the facts by referring to data in the office.

Q What data in your office would indicate the time you received it? A I would simply inquire of the man who made it.

Q It was made in your office? A It was made in Boston.

Q Do you mean you would write to Boston? A No, sir, the man who made it was in our employ at that time and is now, he was when he made it.

Q Please let me have all the information relating to James Allen of Dartmouth, Massachusetts. A (Papers handed counsel.)

Mr. O'Connor: Mark these for identification.

(Said papers marked by the reporter for identification "198" and "199".)

Q Please let me have all the information relating to the Florence Manufacturing Company of Florence, Massachusetts. A (Papers handed counsel.)

Mr. O'Connor: Mark these for identification.

(Said papers marked by the reporter for identification "200" and "201".)

519 Q Please let me have all information relating to the F. A. Whitney Carriage Company, Leominster, Massachusetts. A (Papers handed counsel.)

Mr. O'Connor: We offer these in evidence.

(Said papers marked Complainants' Exhibits 202, 203, 204, 205 respectively, and are in words and figures as follows, to wit:)

520 Q Please let me have all information relating to Clark & Co., Middleborough, Massachusetts. A (Papers handed counsel.)

Mr. O'Connor: Mark these for identification.

(Said papers marked by the reporter for identification "206", "207" and "208".)

Q Mr. Clancy, in the paper numbered by the reporter "206" I observe that the date has been erased. What was there before the erasure was made, do you know? A Nothing more than is there now, I don't think. There is no erasure, that is that would indicate it was made after any time, it is 1901 plain enough.

Q That is true but isn't it apparent that there was an erasure? A Apparently there was something erased there.

Q You do not know what was there before 1901 was written, do you? A No, but I would say that that was what the date was at the time.

Q What month? A That would go out probably, that was probably made up last Fall some time.

Q In all of the other papers in which I have observed a date, I have noticed that not only the year but the month was given. How does it happen that in that paper only the year

was given and not the month? A That is a clerical error, that is the only explanation I could give, there has no erasure been made on that blank of anything, of any nature whatsoever.

Q Can you tell us in what part of 1901 that report was
521 received by you? A It was received before our book came out.

Q When? A It is dated here, Mr. O'Connor, October 7, 1901, and October 21, 1901.

Q You refer to the date in the upper right hand corner? A Yes, sir.

Q It was received about that time probably by you? A It was, probably was, of course I do not receive all the communications, but there is a date showing we got it about that time.

Mr. O'Connor: We offer these in evidence.

(Said papers marked Complainants' Exhibits 206, 207 and 208 respectively, both inclusive, and are in words and figures as follows, to wit:)

522 Q Let me have all the information relating to A. H. Ordway & Co., South Framingham, Massachusetts. A (Papers handed counsel.)

Mr. O'Connor: Mark those for identification.

(Said papers marked by the reporter for identification "209", "210", and "211".)

Q Let me have all the information relating to Howard Gaylord & Co., South Hadley, Massachusetts. A (Papers handed counsel.)

Mr. O'Connor: Please mark those for identification.

(Said papers marked by the reporter for identification "212" to "223", both inclusive.)

Q Let me have all the information in relation to Booth & Luther, Taunton, Massachusetts. A (Papers handed counsel.)

Mr. O'Connor: We offer these in evidence.

(Said papers marked Complainants' Exhibits 224 and 225 respectively, and are in words and figures as follows, to wit:)

523 Q Let me have all the information in relation to Hatch & Barnes, Worcester, Massachusetts. A (Papers handed counsel.)

Q Mr. Clancy, these check marks in blue lead pencil are marks that you made, are they not, Mr. Clancy? A Let me

Will- see; do they refer to anybody except the people you are asking about?

Q Where there is a check mark referring to people we are asking about, that was made by you, was it not? A I could not tell you whether that was or not, I rather doubt whether I made that myself, I think anything I checked of that kind that you are interested in, I think I put a cross in every case.

Mr. O'Connor: Mark these for identification.

(Said papers marked by the reporter for identification "226" to "235" both inclusive.)

Q Look at the paper which I now show you, Mr. Clancy, numbered by the reporter "226" and state when it was received with reference to the issue of your January, 1902, book. A This was received January 17th.

Q It was received after your January, 1902, book was printed, was it not? A I think not.

Q Wasn't it received after your January, 1902, book was made up?

Mr. Pease: What do you mean by made up?

Mr. O'Connor: Compiled.

A No, sir, I don't think it was.

524 Q When was your January, 1902, book put up in the hands of the printer? A Why it was in the hands of the printer I think, from some time about the latter part of November or the first, along about the first of December we started on it, Mr. O'Connor.

Q Was not your book made up at that time? A No, sir.

Q When was your book made up? A Why, it is never made up till it is printed; we make corrections right up till the last minute.

Q Do you remember whether you made any corrections in Hatch & Barnes, rating in your book after you received this report? A I do not know.

Q Look at the report numbered by the reporter "235". Where is the information upon which that report is based, or rather the two reports contained in that paper? A To which do you refer, Mr. O'Connor?

Q The top one. A Of October 2nd?

Q Yes. A There seems to be no data here other than it may appear in the other card which you have.

Q You would not make a new card report from older card reports, would you? A We make up our reports from all data we have in the office.

Q But unless you have some other information than is contained in a former card report, you would not make up a new card report, would you? A On additional data? Depos iam

525 Q Yes, unless you have some additional information would you make out a new card report from older card reports? A No, I think not, we would have additional data in the office.

Q That is you would not make out a new card report unless you had some data in addition to older card reports? A Oh, it might be done, it might be done, if we have revisions or data that would come in from a subscriber or from any source whatever, why, we might conclude to write a report.

Mr. Pease: Well, you often write them from rough card reports?

The Witness: We write them from all data that comes to our office.

Q My question, Mr. Clancy, is, whether you would make out a new card report from older card reports only, where you had no other information than what is already contained in older card reports? A It might be that we—

Mr. Pease: I object to the question unless the card report is identified or designated as a rough card report or a subscriber's report.

A (Continuing.) Our information is oftentimes transferred or compiled or put on the card report in what we call the rough form. That is simply for the information of the office and is not in form or shape to go to a subscriber.

Q Such card reports as are marked "rough"?

Mr. Pease: Yes.

526 Mr. O'Connor: These card reports you have handed us are what are known as subscriber's reports, are they not?

Mr. Pease: Yes. The card report you are now inquiring about is apparently a subscriber's report. Isn't it. (Handing said card to Mr. Stadden.)

Mr. Stadden: That is a report sent to a subscriber.

Mr. Pease: And would be naturally made up from the rough card reports, that was what they really did I mean.

Q Mr. Clancy, the second report dated January 17, 1902, speaks of your representative making a certain report. Where is that report? A That is a common phrase used in agency work, Mr. O'Connor, a very common phrase.

Q Well, wouldn't he make the report in writing, this con-

of Will-
ney.

cern being located in Massachusetts? A Why, correspondent or some representative would make the report.

Q If such a report were made to you, wouldn't you preserve it in your files as part of your information relating to this concern? A We endeavor to preserve all information.

Mr. Pease: Is not that the report that this was written from?

The Witness: I don't know.

Mr. Pease: Why don't you find out before you answer the question?

The Witness: These reports are sent out—

Mr. Pease: Don't answer any more questions till you
527 have the papers in your hand and understand what he is inquiring about. Counsel is very clever.

Q The report dated January 17, 1902, numbered by the reporter "235", is based, you say, upon the paper which the reporter has numbered "226", is that correct? A The lower report as I understand it.

Q Where is the information upon which the upper report of October 2, 1901, is based? A I don't know.

Q Isn't it true, Mr. Clancy, that such reports as these are made up by the clerks in your office some times from reference books of other agencies? A No, sir, not to my knowledge; we would not allow that.

Mr. O'Connor: We will offer these in evidence.

(Said papers marked Complainants' Exhibits 226 to 235 both inclusive, and are in words and figures as follows, to wit:)

528 Q Who is "H. J. F."? A "H. J. F." would be Mr. Fuller.

Q Who is "E. R."? A I don't know.

Q These are the initials of the stenographer who wrote the report, aren't they? A Yes.

Q Please let me have all the information relating to Otto Rosenfeld, Manistee, Michigan. A (Papers handed counsel.)

Mr. O'Connor: Mark these for identification.

(Said papers marked by the reporter for identification "236" to "252" both inclusive.)

Q Please let me have all information relating to C: H. Stevens & Co., Concord, New Hampshire. A (Papers handed counsel:)

Mr. O'Connor: Mark these for identification.

(Said papers marked by the reporter for identification "253", "254" and "255".)

Q On the paper numbered by the reporter "253" opposite the numbers "four" and "14" I see blue check marks. Who made these blue check marks and for what purpose were they made? A I don't know.

Q What is the date of the paper numbered by the reporter "255"; that is when was it received by you? A Why, from the writing on here I would say that that was received at least two years or more ago.

Mr. O'Connor: We offer these in evidence.

(Said papers marked Complainants' Exhibits 253, 254, 255, and are in words and figures as follows, to wit)

529 Q Please let me have all information relating to Proctor Brothers & Company, Nashua, New Hampshire. A (Papers handed counsel.)

Mr. O'Connor: Mark these for identification.

(Said papers marked by the reporter for identification "256", "257", "258" and "259".)

Q On the papers numbered by the reporter "256" and "257" I see a blue check mark opposite "8" which is the number assigned to Proctor Brothers & Company. For what purpose were those check marks made? A I don't know.

Q Do you know when they were made or by whom they were made? A No, sir, I do not.

Q On the paper numbered by the reporter "259" I see opposite the names or opposite all of the names except that of Charles H. Sleight certain letters and figures. What do these letters and figures indicate? A It is our key.

Q That is, the letters indicate the ratings according to your system of rating, do they not? A They are ratings as shown by our key.

Q What do they indicate? A Why, "A1" in our key would be $50,000.00 to $75,000.00.

Q That is they indicate the amount the parties are supposed to be worth according to your ratings, do they not? A They indicate what they are supposed to be worth?

Q Yes. A That is our rating, yes, sir.

Q My question I think is intelligible, Mr. Clancy.

530 You say that the first $50,000.00 to $75,000.00? A Yes, sir.

Q That is that the party opposite whose name that rating appears is supposed to be worth from $50,000.00 to $75,000.00? A That would be my idea.

of Will-
cy.

Q In like manner the other letters indicate the amounts according to your idea, the ratings indicate the amounts which the parties are supposed to be worth? A Yes, sir.

Q Were those letters and figures put upon that sheet before it was sent out? A I cannot tell you.

Q That is what you call a revision sheet, isn't it? A That is one of our revision sheets, yes, sir.

Q It is sent out to your correspondent for inquiries regarding the persons mentioned on it? A Yes, sir.

Q Were not these letters and numbers put on it before it was sent out? A I cannot tell you.

Q What is your opinion? A I don't know.

Q Didn't you frequently put such letters and figures on revision sheets before they were sent out? A Occasionally, not frequently, no, sir.

Q It was sometimes done in your office, wasn't it? A Yes, sir.

Q Do you know by whom those were put on that revision sheet? A No, sir, I do not.

Q Where were they taken from? A I do not know.

Q You say that such letters and figures are sometimes put on your revision sheets before they are sent out. For
531 what purpose are they put on the revision sheet? A Why, we have our data and make the rating.

Mr. O'Connor: I object and ask that that portion of the answer be stricken out, because it is not responsive. I ask for what purpose it is done and how it is done.

The Master: It should be stricken out, I think.

Q For what purpose are those letters and figures put on the revision sheet before it is sent out? A To show our rating.

Q You don't know who made those sheets? A No, I do not.

Q And consequently you don't know where these were got from? A No, sir.

Mr. O'Connor: We offer these in evdience.

(Said papers marked Complainants' Exhibits 256 to 263 respectively both inclusive, and are in words and figures, as follows, to wit:)

532 Q Let me have all information relating to W. H. Ingersoll, Hamburg, New York. A (Paper handed counsel.)

Mr. O'Connor: We will offer that in evidence.

(Said paper marked Complainants' Exhibit 264 and is in words and figures as follows, to wit:)

533 Q Let me have all information relating to William L. Bullock, Mount Holly, New Jersey. A (Paper handed counsel.)

Mr. O'Connor: Mark those for identification.

(Said papers marked by the reporter for identification "265", "266", and "267".)

Q Let me have all information relating to Hopkins & Williams Company, Newton, New Jersey. A (Paper handed counsel.)

Mr. O'Connor: Mark these for identification.

(Said papers marked by the reporter for identification "268" to "273" both inclusive.)

Q Let me have all information relating to Biggs, Pollard & Groves, Espanola, New Mexico. A (Papers handed counsel.)

Mr. O'Connor: We offer these in evidence.)

(Said papers marked Complainants Exhibits 274 and 275 respectively, and are in words and figures as follows, to wit:)

534 Q Let me have all information relating to J. M. Cogo & Company, Port Jervis, New York. A (Papers handed counsel.)

Mr. O'Connor: We offer these in evidence.

(Said paper marked Complainants' Exhibits 276, 277, and 278, respectively, and are in words and figures as follows, to wit:)

535 Q Please let me have all information relating to Fore & Foster Company, Wilmnigton, North Carolina. A (Papers handed counsel.)

Mr. O'Connor: Mark these for identification.

(Said papers marked by the reporter for identification "279" to "285" both inclusive.)

Q Mr. Clancy, where is the information upon which this report numbered by the reporter "285" is based? A Part of it appears to be here.

Q Where is the rest of it? A Well, it may have been old cards, old previous information in the card files.

Q Where are they? A Why, we have not them here, they may have been lost or mislaid.

Mr. O'Connor: We offer these in evidence.

(Said papers marked Complainants' Exhibit 279 to 285

of Will- ney.

both inclusive, and are in words and figures as follows, to wit:)

536 Q Please let me have all information relating to Stout & Holden, Bradford, Pennsylvania. A (Papers handed counsel.)

Mr. O'Connor: Mark these for identification.

(Said papers marked by the reporter for identification "286" to "291" both inclusive.)

Q Who is "H. J. F."? A That I think is Mr. Fuller.

Q Was he with you in October, 1901 ? A I think so.

Q Where is the information upon which this report numbered by the reporter "291" is based? A I guess the data more or less of it is right here.

Q Is it all here? A Not all of it.

Q Where is the rest of it? A I don't know.

Mr. Abbott: October, 19, 1902?

Mr. O'Connor: Yes.

Q Look at the paper numbered by the reporter "290" and state whether that revison sheet was ever sent out. A Whether it was ever sent out?

Q Yes. A I do not think we ever got up revision sheets that don't go out.

Q It was returned unanswered, was it? A Why, it is returned as it is shown here.

Q Who made that check mark opposite the number "13"? A I don't know.

Q Do you know to whom that was sent? A To whom that blank was sent?

Q Yes. A Let me see the blank a minute.

537 (Paper handed witness.)

Q Is there anything on the blank to indicate to whom it was sent? A Will you let me see the other blanks?

Q Is there anything on that blank to indicate to whom it was sent? A I say it was sent to our attorney there.

Q But is there anything on the blank to indicate to whom it was sent? A Nothing more than the fact that that would be the supposition, that it was sent to him.

Mr. Pease: Do you want to see the rest of the papers?

The Witness: I might give you some more information if I were to see them.

Q Was that blue check mark opposite "13" opposite the figure "13" on that paper when it was returned? A I don't know, Mr. O'Connor.

Q Didn't you put this blue check mark on the paper?
Mr. O'Connor: I offer these papers in evidence.
(Said papers marked Complainants' Exhibits 286 to 291 respectively, both inclusive, and are in words and figures as follows, to wit:)
538 Q Let me have all the information relating to the Lancaster Planing Mill, Lancaster, Pennsylvania. A (Papers handed counsel.)
Mr. O'Connor: We offer these in evidence.
(Said papers marked Complainants' Exhibits 292, 292A and 292B respectively, and are in words and figures, as follows, to wit:)
539 Q Please let me have all the information relating to Charles Crause, Littleston, Pennsylvania. A (Papers handed counsel.)
Mr. O'Connor: We offer these in evidence.)
(Said papers marked Complainants' Exhibits 293, 294, and 295 respectively, and are in words and figures as follows, to wit:)
540 Q Please let me have all the information relating to Skyles, Miller & Co., Martinsburg, Pennsylvania. A (Papers handed counsel.)
Mr. O'Connor: Mark these for identification.
(Said papers marked for identification by the reporter "296" to "299" both inclusive.)
Q Please let me have all the information relating to the Portland Lumber Company, Portland, Pennsylvania. A (Papers handed counsel.)
Mr. O'Connor: Mark these for identification.
(Said papers marked for identification by the reporter "300", "301" and "302" respectively.)
Q Let me have all the information relating to L. S. Clough, Warren, Pennsylvania. A (Papers handed counsel.)
Mr. O'Connor: We offer these in evidence.
(Said papers marked Complainants' Exhibits 303 to 310 respectively, both inclusive, and are in words and figures as follows, towit.
541 Q Please let me have all the information relating to William Gilbane & Brother, Providence, Rhode Island. A (Papers handed counsel.)
Mr. O'Connor: We offer these in evidence.
(Said papers marked Complainants' Exhibits 311 to 315 both inclusive, and are in words and figures as follows, to wit:)

n of Will- ancy.

542 Q Please let me have all the information relating to the Blanton Stave & Lumber Company, Memphis, Tennessee. A (Papers handed counsel.)

Mr. O'Connor: We offer these in evidence.

(Said papers marked Complainants' Exhibits 316, 317, 318 and are in words and figures as follows, to wit:)

543 Q Please let me have all the information relating to the Champlain Lumber Company, Burlington, Vermont. A (Papers handed counsel.)

Mr. O'Connor: Mark these for identification

(Said papers marked by the reporter for identification "319" to "332" both inclusive.)

Q Please let me have all the information relating to J. P. Ashcraft, Hundred, West Virginia. A (Papers handed counsel.)

Mr. O'Connor: Mark those for identification.

(Said papers marked by the reporter for identification "333" and "334".)

Mr. O'Connor: We would like to have the information relating to all the names that we gave to Mr. Pease last Saturday at the next hearing, and we will furnish more names to Mr. Pease tomorrow morning so that Mr. Clancy can bring the information or at least a part of it on Monday.

Mr. Pease: We would like to discuss that question with the Master, and at the convenience of Master and counsel.

The Master: I think, Mr. Pease, that this is proper; we can make no progress in an inquiry of this character without it. It is the settled practice of the Federal Court to conduct an inquiry in this way. It is a matter that has been

544 brought before the court to my knowledge within my practice many, many times, until it has become the settled practice. There is no doubt in regard to it so far as I am concerned.

Mr. Pease: That is without any limit? There is no limit as to the number of names they may call for?

The Master: No limit as to the number of names they may call for.

Mr. O'Connor: I have suggested, Mr. Pease, that until I give you further notice I will call only for information relating to parties who are rated in R. G. Dun & Company's book and the Lumbermen's Credit Association book at the same ratings.

Mr. Pease: Do you mean by the same letter?

Mr. O'Connor: No, not the same letter but the same amount or substantially at the same amount.

Mr. Pease: How many will you call for?

Mr. O'Connor: I cannot tell you.

Mr. Pease: We would like to make our record, if we may with due deference to the Master, as I may conclude to go to the court with it.

Mr. Abbott: I am frank to confess we have not subpoenaed you to produce this, and have not laid any foundation, but we supposed the objection was to the principle rather than to the practice.

Mr. Pease: It is to the principle also but I think that the examination should be concluded with reference to these names, and I want to ask Mr. O'Connor if he has made all the use of these papers which we have produced here that he desires to make use of.

Mr. O'Connor: For the present, so far as this witness
545 is concerned.

Mr. Pease: Have you any other witness, or do you wish to make any other use of these papers?

Mr. O'Connor: Certainly.

Mr. Pease: Then I wish you to finish your examination so far as these papers are concerned.

Mr. O'Connor: Do you want me to drop this witness and take up another witness?

Mr. Pease: Yes. And my purpose in that is this, I will show—I am satisfied I will be able to show from the examination of Mr. Clancy and the examination of other witnesses with reference to these papers that there is no showing, that the evidence will not warrant any further inquiry; that we have original information for every rating that appears on these 75 names.

The Master: Yes, but you cannot go into that now.

Mr. Pease: That is where the Master and I do not agree. I think we can end the inquiry.

The Master: There is only a single issue, as I understand it, and that is whether the defendants have pirated material and used it in making up their books.

Mr. Pease: Yes, sir.

The Master: Then I do not think there is any different rule but to go ahead with your examination. Mr. Pease cannot say that because you have made your case with your
546 testimony that is already adduced that you cannot go on with other testimony.

of willsey.

Mr. Pease: Well, I do not view the principle as the Master has stated; it may be, but I do not take quite that position; this is different from an ordinary lawsuit, if the Court please, in other words they will not be permitted to fish around our office and call for miscellaneous information in the hope of being able to discover some evidence upon which they can recover, or maintain their bill, that is clear. Now, they have demanded information as to 73 names, I think it is, and we have produced them; now, then, if the showing, the result of the examination is such as to satisfy the court that as to those names even there has been no piracy or no wrongful use of the book, they cannot be and I do not believe they will be allowed to go on and take 75 more names and then 75 more, until they exhaust the full 60,000 which our book contains. The result of that would be simply to annihilate and destroy our business; we canot do business and have our office in a turmoil such as the searching for these papers results in, and the time that it takes.

The Master: Well, Mr. O'Connor, you give your notice and we will go on with the testimony.

Mr. Pease: That is all right, certainly.

Adjourned to 11:00 A. M., Tuesday, February 18, 1902.

547 11.00 A. M. Tuesday, February 18, 1902.

Adjourned to 2.00 P. M. same day.

2.00 P. M. Tuesday, February 18, 1902.

Continuation pursuant to adjournment.

Present:

Mr. O'Connor,
Mr. Abbott,
Mr. Pease.

WILLIAM CLANCY.

Direct Examination Resumed by Mr. O'Connor.

Q Mr. Clancy, a subpoena was served upon you yesterday to produce certain information relating to a list of names attached to the subpoena, was it not? A Yes, sir; I believe so, yesterday.

Q Have you produced that information, or any part of it? A No, sir.

Q Why? A On counsel's advice.

Q You refuse to produce any part of it, do you? A Yes sir. Deposition of William Clancy.

Mr. Pease: You better offer the subpoena in evidence, I guess.

Mr. O'Connor: There is the subpoena. (Handing same to the Master.)

548 Mr. Pease: We would like to have it offered in evidence.

Mr. O'Connor: We offer it in evidence.

(Said document marked Complainants' Exhibit #335, and is in words and figures as follows, to wit:)

549 Mr. Pease: Our reasons for advising the witness not to produce the papers mentioned and called for, and the refusal to produce them, is based on the following reasons:

First, because the subpoena served upon the witness is too vague and indefinite, in that it does not particularly describe any of the papers called for, or state the contents thereof.

Second, there is no showing that the papers and documents called for are material or pertinent to the question or issue now before the Court.

Third, because there is no showing that there are any such papers in existence, or in the possession or under the control of the witness or the Lumbermen' Credit Association; on the contrary, it appears from the sworn bill of complaint and the affidavits filed in this case on behalf of the complainants, that there are no such papers in existence or in the possession or under the control of the witness or the Lumbermen's Credit Association.

Fourth, because the complainants have not pointed out the specific names and ratings which it is claimed the defendants copied, which can and should be done by comparison of the two books in question.

Fifth, because there is no showing that the ratings given to persons, firms, and corporations, named in the list annexed to the subpoena, by the defendant association are the same as complainants' ratings.

550 Sixth: The reference book published by the Lumbermen's Credit Association contains upwards of 60,000 names, in compiling which many original sources of information have been used. Some of the information is upwards of twenty-six years old. To properly show the basis of ratings appearing in the January, 1902, edition of the reference book issued by said association, it would in many instances require

Will- the examination of a very large number of documents as to each name. That to produce the documents on which the ratings are based as to all of the names contained in said reference book would require an examination of over one million papers. That to fully present the honesty and good faith with which the defendants have compiled the ratings contained in said reference book, it would require the introduction, item by item, of all the documents relating to all of the names in said book.

Seventh: There is no showing that the lists of names attached to the subpoena served upon the witness have any reference or connection with the question now before the Court, and upon which the motion for a temporary injunction was made, except as to the list of names attached to the affidavit of Stanley T. Prudence, which was all there was before the Court at the time of the reference to the Master and as to which names the witness has produced all papers and writings which he has been able to find, aggregating between two and three hundred papers and docu-
551 ments, only a small part of which has been offered in evidence by the complainants.

Eighth: That without the specifications by complainants as to the particular papers which they desire, and that the same have some bearing upon the question before the Court, and as to the contents of such papers, and as to what they expect to prove thereby, and without some limit as to the scope of the examination, the present inquiry amounts to a mere matter of discovery of the private information of the Lumbermen's Credit Association, which has been compiled at great expense by said association, the most of which has been received by said association under a pledge of confidence; and the publishing of which information is in violation of such confidence, and impairs the ability of said association to secure information in the future, and which information is, as we are informed and believe, designed to benefit the Foster Lumber Mercantile Agency rather than the complainants in this cause.

Ninth: That the miscellaneous examination of data regarding names in the reference book published by said association causes great inconvenience in searching therefor through the files and papers, and interferes greatly with the business of said association, and results in great loss and damage to the business of said association, and has become

and is oppressive. That the complainant, as to the names
552 contained in the list attached to the affidavit of Stanley T: Prudence, has in the examination before the Master utterly failed to sustain any allegation of the bill of complaint; that on the contrary the complete and absolute good faith of the defendants has been shown; that the calling for information as to other names is outside of the scope of the reference, and if persisted in and permitted will result in great injury, loss and damage to the said association.

Tenth: That the business of said association is of a confidential nature, the value of which in great measure depends upon its being and continuing confidential. That to produce for the inspection of complainants' counsel and his witness all the files and papers relating to the business of said association, would necessarily make the same public and destroy in a great measure the value of said business of said association by furnishing to its principal competitor, the Foster Lumber Mercantile Agency, such information which has been gathered by the defendant association at great cost and expense and after twenty-six years of continuous labor. That this suit was not commenced, and the present inquiry is not conducted in good faith for the benefit of the complainant, but for the purpose of eliciting information with reference to the business of the Lumbermen's Credit Association; regardless of whether such information shows any infringement of al-
553 leged copyright, as claimed in the bill or not; that this suit was was instigated and is being pursued by the Foster Lumber Mercantile Agency for the sole purpose of forcing or attempting to force said association out of business; and in this connection and in connection with the several objections, we desire to refer to the affidavits filed by the defendants on the hearing of the motion for a temporary restraining order, and read in open court in support of these objections.

The Master: I think that under the general allegation of the bill the complainants are entitled to this examination, as the only method by which the issue can be determined. I think that the information should be furnished. The witness has declined to produce the information?

Mr. O'Connor: Yes, sir.

The Master: I will direct him to produce the papers called for in the subpoena.

Mr. O'Connor: Do you refuse to do so?

The Witness: Yes, sir.

Wil- Mr. Pease: It will also appear from the evidence adduced that R. G. Dun & Company's ratings in a majority of the persons, firms and corporations appearing in this list annexed to the affidavit of Prudence were copied from our book.

The Master: The objections are overruled.

Mr. Pease: To which ruling the defendants' counsel
554 excepts, and desires the question to be certified to the Court.

The Master: Which is done.

HENRY W. BISHOP,
Master in Chancery.

555 2 P. M. Tuesday, May 6, 1902.

Parties met pursuant to notice and adjourned to 2 P. M. Thursday, May 8, 1902.

2 P. M. Thursday May 8, 1902.

Continued pursuant to adjournment.

Present:

Mr. O'Connor;
Mr. Abbott.
Mr. Pease.

WILLIAM CLANCY.

Direct Examination Continued by Mr. O'Connor:

Q Mr. Clancy, will you please look at the subpoena which I now show you and look at the list of names attached to it. Have you made a search for the information called for in that subpoena since it was served upon you? A No, sir.

Q Do you know whether the Lumbermen's Credit Association has any information in its possession or under its control relating to any of those names? A Not that I know of. It probably has, I have made no investigation as to that.

Q You have made no search for the information? A No, sir.

Q Do you remember when this subpoena was served on you? A I do not, no, sir.

Q Before this subpoena was served on you, another one similar to it calling for the same information was served upon you, wasn't it?

Mr. Pease: That I object to.

The Master: You can answer subject to the objection.

A Yes, sir.

The Master: I suppose the return on the subpoena Depo
556 is the best evidence, Mr. O'Connor, have you the subpoena?

Mr. O'Connor: Not the other one; I think it is at my office.

Mr. Pease: It is admitted you served this one, and that will raise the question we want to raise.

Q Do you refuse to produce the information that is called for in this subpoena? A Under counsels' advice, yes, sir.

Q You are the president of the Lumbermen's Association? A Yes, sir, I am.

Q You were at the time this subpoena was served upon you? A Yes, sir.

Mr. O'Connor: We ask for a rule upon the witness to produce the information called for in this subpoena which is as follows:

MASTER'S SUMMONS. Mas

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, executors and trustees under the will of Robert G. Dun, deceased.	
Complainants.	In Chancery.
vs.	
The Lumbermen's Credit Association, William Clancy and Burton W. Stadden,	
Defendants,	

In pursuance of the authority and directions contained in an order made in the above cause, by the said Court, on
557 the 27th day of January, A. D. 1902, I, the undersigned, as Master in Chancery of said Court, do hereby Summon you William Clancy to appear before me, at my office, Suite 947 The Monadnock Building, S. W. cor. Jackson Blvd. and Dearborn St. in the City of Chicago, on Tuesday the 6th day of May, A. D. 1902, at two o'clock in the afternoon, to be examined on oath, touching certain matters and things set forth in a bill of complaint filed in this cause.

mons. And to produce and bring with you all the written and printed information in your possession or control or in the possession or control of the Lumbermen's Credit Association relating to the persons, firms and corporations named in the list hereto annexed, and used or referred to by the said Lumbermen's Credit Association in determining or fixing the ratings of the said persons firms and corporations in the January, 1901, July, 1901, and January, 1902 editions respectively of its Reference Book.

Hereof fail not, at your peril.

Dated the 2nd day of May, A. D. 1902.

(Signed) H. W. BISHOP.
Master in Chancery of the Circuit Court of the United States, for the Northern District of Illinois, Northern Division.

I served the within Master's Summons. by reading the same personally to, and in the presence and hearing of

.....

therein named, on the ..... day of ..... A. D. 189 .

.....
U. S. Marshal.

By.....
Deputy.

Marshal's Fees.
.....Service.....
.....Miles.....

558 State of Illinois, } ss.
County of Cook, }

Bernard P. Weber, being first duly sworn, deposes and says that he served the within subpoena upon William Clancy, therein named, by reading the same to him this third day of May, 1902.

(Signed) BERNARD P. WEBER.

Subscribed and sworn to before me this 6th day of May, A. D. 1902.

(Signed) ELFIN L. EHOTIN,
(Notarial Seal.) *Notary Public.*

E. E. Canfield of Chico, Cal.
J. C. Cunningham of Los Angeles, Cal.
Kilifer Cultivator Co. of Los Angeles, Cal.
Hickinbotham Bros. of Stockton, Cal.

J. O. Horner & Son of Beach, Va. Mast
Starkes Dixie Plow Works of Richmond, Va.
Lynchburg Plow Co. of Lynchburg, Va.
Shaner & Thurman of Lynchburg, Va.
The Atwood-Crawford Co. of Pawtucket, R. I.
Fred W. Morse of Providence, R. I.
Micajah Currier & Sons of Abbot, Maine.
Joseph B. Libbey of Gardiner, Maine.
John B. Varney Plow Co. of North Berwick, Maine.
Rockwell & Sherwin of Brattleboro, Vt.
Peck Clark & Co. of Brookfield, Vt.
E. R. Hill of Fairhaven, Vt.
J. E. Houston of Stowe, Vt.
Elizabeth Wagon Wks. of Elizabeth, N. J.
Neshwitz Mfg. Co. of Millington, N. J.
559 Thos. Riddle of Oceanport, N. J.
S. W. Hurlbud of Brasher Falls, N. Y.
Rochester Wheel Co. of Brockport, N. Y.
United Hame Co. of Buffalo, N. Y.
Chapinville Wheel Co. of Poughkeepsie, N. Y.
Metzger Bros. of Rochester, N. Y.
A. L. Varney Mfg. Co. of Syracuse, N. Y.
Jonas L. Knoll, of Lebanon, Pa.
William E. Sturges & Son of Westport, Conn.

(Backed as follows) "Filed May 8, 1902, Henry W. Bishop, Master in Chancery."

The Master: Have you the order here that was entered which is the basis of this examination now?

Mr. O'Connor: I will produce it.

(Said order is in words and figures as follows, to-wit:

Mar. 8, 1902. Ord
Judge Kohlsaat.

26143 Mary B. Dun, *et al.* *vs.* Lumbermen's Credit Association, *et al.* } Equity.

Now come the parties by their solicitors, and the motion of the complainants for a rule on William Clancy to produce certain evidence before the Master in Chancery before whom this matter has been referred, and the Court having heard the same and being now fully advised in the premises,

d Will-
ey.

It is ordered that the complainants have leave to examine witnesses as to 28 additional names to be selected by the complainants, and said rule discharged as to said William Clancy.

560 (Blue pencil endorsement as follows:)

Sub. to Ct. & O. K. H. S. S.

(Backed as follows:) 26143 U. S. Cir. Court, Nor. Dist. of Ill. Dun v. Lumbermens Credit Asso. Order Kohlsaat, J. Filed Mar. 8, 1902, S. W. Burnham, Clerk. Entered.

The Master: I will direct the witness to produce the information sought for by counsel.

Q. Will you produce it, Mr. Clancy? A By counsel's advice I will not.

Mr. O'Connor: There is nothing for us to do but to make application to the court for a rule upon the witness to produce the information; and I ask that this record be certified to the Court.

The Master: Which is done.

HENRY W. BISHOP,
Master in Chancery.

Adjourned to new notice.

2 P. M. Thursday, June 5, 1902.

Parties met pursuant to notice.

Present:

Mr. O'Connor.
Mr. Pease.
Mr. Clancy.

Mr. O'Connor: I am through with the examination of Mr. Clancy for the present.

Mr. Pease: I am not prepared to cross-examine him.

Mr. O'Connor: When can you go on?

Mr. Pease: Next Thursday.

561 Adjourned to 10:30 A. M. Thursday, June 12, 1902.

10:30 A. M. June 13, 1902.

Parties met pursuant to adjournment.

Present:

Mr. O'Connor.
Mr. Abbott;
Mr. Pease;

Mr. Pease: I will state that we have concluded not to cross-

examine Mr. Clancy, except that we shall offer in evidence the papers produced here on motion of complainant and not introduced by them. Proceed

Mr. Abbott—: We make formel objection to them as immaterial.

Adjourned to 2:00 P. M. Thursday, June 19, 1902.

No further proceedings were had before me under this order of reference.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States Northern District of Illinois.

Recd. from complt. for stenographers costs & Master's fees $127.00

(Endorsed) Filed Feb. 18, 1903, Marshall E. Sampsell, Clerk.

562 IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Northern Division.

Mary B. Dun, Robert Dun Douglas, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the will of Robert G. Dun, deceased,	Gen. No. 26,143.
vs.	
Lumbermen's Credit Association, William Clancy and Burton W. Stadden.	

Depositions taken on behalf of complainant in the above entitled cause, before Marshall E. Sampsell, Clerk of the United States Circuit Court for the Northern District of Illinois, duly appointed as Special Examiner, at his office in

the Monadnock Block, Chicago, Illinois, on the 9th day of October, 1902, at 11:30 o'clock A. M.

Present:

Mr. John O'Connor, of the firm of Hoyne, O'Connor & Hoyne, and

Mr. C. K. Offield, of the firm of Offield, Towle & Linthicum, solicitors for complainants;

Messrs. Atwood & Pease, solicitors for defendants.

of Will- Fergu- 563 WILLIAM E. FERGUSON, called as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination

By Mr. O'Connor.

Q. What is your name? A. William E. Ferguson.

Q. Do you know the defendant? A I do.

Q The Lumbermen's Credit Association? A I do.

Q Were you ever connected with it in any way? A I was employed by them.

Q In what capacity? A Rating clerk, and dictating rough copies.

Q What experience have you had as a rater? A I was a reporter for Bradstreet's, and Chief Clerk for the Bradstreet company in St. Paul, and Manager of the National Mercantile Agency.

Q. How many years experience have you had in that line? A I can't say exactly, about six or eight, rough estimate.

Q When did you enter the service of the Lumbermen's Credit Association? A About February 15, 1901, I think.

Q When did you quit its employment? A October first.

Q In what year? A Same year.

Q While you were in its service did it publish any book? A Yes, the July Reference Book.

564 Q When is that book published, if you know? A On or about July first.

Q Are more than one edition of it published in each year? A Yes, January and July.

Q Two editions each year? A Yes.

Q The January edition is published when? A On or about January first.

Q And the July edition when? A On or about July first.

Q While you were in its service the edition of July, 1901, was issued? A Yes, sir. Deposition of William E. Ferguson.

Q Did you work on that edition? A I did.

Q What work did you do on that edition? A I did the revision of some of the western states.

Q Can you tell us what states? A Yes. Arizona, California, Idaho, Kentucky, Missouri, Nebraska, New Mexico and Washington.

Q What did that revision work consist of? A The placing of names and ratings upon such firms in the lumber business or using lumber.

Q Was any book used in that revision work? A Yes, there was a—

Mr. Pease: Wait, that answers the question.

Q What book?

Mr. Pease: I object.

A The book termed the Red Book.

565 Q The Red, or Red Bound Book? A Yes, Red Book, they call it.

Q Describe that book, if you please? A That book is a copy of the—

Mr. Pease: I object for the reason that the book is the best evidence.

A That book is a copy of the print of the book published by the Lumbermen's Credit Association, with their ratings.

Q Published when? A Presumably the one before that; I get the book that we—

Q The last previous edition of the Lumbermen's Credit Association book? A Presumably so, with the additional figures and numbers after the ratings placed by the Lumbermen's Credit Association.

Q What were those additional figures and numbers?

Mr. Pease: I object for the reason that the book shows for itself and is the best evidence.

A The figures are corresponding to those published by R. G. Dun & Company and Bradstreet's agencies.

Mr. Pease: I move to strike out the answer.

Q Look at the book which I now show you and state what it is? A It is the January, 1902 Reference Book of the Lumbermen's Credit Association.

Q Describe from that book, the Red Bound Book that you mentioned?

Mr. Pease: Same objection as before.

566 A Well, the print would be the same, cut out from here (indicating) and pasted on manila paper.

Q Well, first,—a page of that book or of a previous edition? A They use a galley proof, I believe.

Q Of the edition--

Mr. Pease: Wait a minute. I object to the counsel leading the witness.

Q Well, tell us in your own language Mr. Ferguson, what the Red Bound Book was, so we can understand it.

Mr. Pease: I object for the reason that the Red Bound Book shows for itself and is the best evidence.

A The print, cutting from a copy of this, is pasted upon manila paper with the additional after the names.

Q After each name? A After each name.

Mr. Pease: I object, Mr. O'Connor.

Q I am asking him, is it after each name?

Mr. Pease: I object to the question for the reason that it is leading; and I object further to counsel interrupting the witness and suggesting the answers desired.

Q Go on, Mr. Witness.

A The addition of such ratings as appeared in Bradstreet's or Dun's, after any names published in this book and the additional names that are not published in this book and are published in Bradstreet's and Dun's are written in on the margin.

567 Q Were there any new names in the Red Bound Book that was used in compiling the July book?

Mr. Pease: Objected to for the reason that the Red Bound Book is the best evidence.

A There was, as I described before, written in the margin.

Q What were your duties in the work, in the revision work on the July, 1901 book?

Mr. Pease: I object to the question as immaterial.

A Placing a rating after such firms as appeared in the states that were given to me to rate, also adding new names with such ratings as were attached.

Q Did you make any use of R. G. Dun and Company's book in the portion of that revision work that was done by you?

Mr. Pease: I object to the question.,

A As appeared on the Red Book, yes.

Q What use did you make of R. G. Dun & Company's ratings as they appeared in the Red Bound Book? A Both

as to comparison and the placing ratings on those names upon which we could get no information.

Q Explain to us what you mean by comparison, &c. Tell us exactly what use you made of Bradstreet's and Dun & Company's books in fixing the ratings, such ratings as were fixed by you in the July, 1901 edition?

Mr. Pease: Object to the question for the reason that there is no evidence the witness used R. G. Dun & Company's book or any issue of it.

568 A The ratings were all checked back by such ratings as appeared in the Red Book and additional to that, where a name appeared we could get no other information and was rated in Bradstreet's and Dun's, we used the ratings that appeared in the Red Book as being their rating.

Q Where did you get this red book? A It was placed in the office and I was instructed to find it on the table in the center of the room.

Q Who gave you that instruction? A Mr. Clancy.

Q Describe the portion, or what portion of it did you find and use in your revision work? A The portions pertaining to the states that I was to go over, in other words, the states mentioned before.

Q In what form was this red bound book? A It was—

Q Were all the states bound in one volume, or in separate volumes? A Each state separate.

Q You took such portions of it as covered your states,—the states assigned to you?

Mr. Pease: I object to the question as leading.

Q Well, what portions of it did you take and use in your revision work? A I took the portions covering those states which I mentioned before.

Q Did you have any key that you used in connection with that book? A I did, two of them.

569 Q What keys were they? A One headed "Dun" and the other headed "Bradstreet".

Q Where did you get those keys? A Furnished by the office.

Q Who furnished them and how were they furnished to you? A I was instructed to go to Mr. Wright and get one, they were typewritten on Manila cards.

Q Were they both typewritten on Manila cards? A Yes, on separate cards.

Q You say that you got one from Mr. Wright? A Both of them.

of Will-Fergu-

Q Both of them from Mr. Wright, by instructions. By whose instructions? A Mr. Clancy's.

Q Did the ratings given by R. G. Dun & Company differ in any case from the ratings that appeared in the defendants' Red Book,—Red Bound Book that was furnished to you? A Yes.

Q What did you do in such cases? A Some cases we sent out for further information, in other cases referred to the files of the Lumbermen's Credit Association. Where no information could be secured in either case we used our discretion in placing ratings appearing in the Red Book.

Q Well, in what way did you use your discretion?

Mr. Pease: I object to that.

A Where we found that Bradstreet and Dunn both coincided on a rating, we placed that rating, or the rating
570 that corresponded in the Lumbermen's book after that name.

Q Well, which rating did you give that name where Dun & Company and Bradstreet coincided but differed from the Lumbermen's Credit Association rating?

Mr. Pease: I object to that for the reason that the books will show. Best evidence.

A That depended largely on whether there was anything at all on file; if they coincided and there was nothing in file we generally changed the information to coincide with the rating placed in the Red Book by the Bradstreet and Dun's.

Q That is, you followed Bradstreet's and Dun's ratings as they appeared in the red book?

Mr. Pease: Objected to as leading.

A Yes.

Q Were there such cases? A Yes.

Mr. Pease: I object for the reason the books are the best evidence.

Q Were there cases where the information in the possession of the Lumbermen's Credit Association was not satisfactory to you?

Mr. Pease: Objected to as leading, and calling for a conclusion of the witness.

A Yes.

Q In such cases what did you do? A It is rather im-
571 possible to answer that question, as circumstances were so different, without a specified case be impossible to.

Q Well, tell us generally what you did in different cases if you remember.

Deposit iam son.

Mr. Pease: I object to that.

A Endeavored to secure further information, if not, and information was incomplete, used Bradstreet's or Dun's ratings as a source of the information.

Q In what way did you use them as sources of information? A Well, if we would get a report in from outside sources stating that a man carried so much stock and no estimate of his total financial worth was given and nothing in regard to payments or—we would merely get the information he had been in business for a number of years and no financial or credit rating given, we would generally secure one from the other books if they coincided.

Q From kwhat other books? A From the Red Book.

Q That is, from Dun & Company's and Bradstreet's ratings as they appeared in the Red Book?

Mr. Pease: Objected to as leading.

Q I want to know what do you mean by the "other books"? A The ratings as they appeared in the Red Book, supposed to be Bradstreet's or dun's.

Q You say that you followed this source where Dun and Bradstreet coincided; were there any cases where the
572 information in the possession of the Lumbermen's Credit Association was not satisfactory and the ratings given by R. G: Dun & Company and Bradstreet differed from each other? A Yes.

Mr. Pease: I object to the question for the reason that it calls for the opinion of the witness,—or a conclusion of the witness.

Q. What did you do in such cases? A We took a rating half way between, ordinarily.

Q Between what? A

Mr. Pease: I move to strike out the answer as not responsive.

A The rating as appeared in the Red Book as being from Bradstreet or Dun.

Q You stated, as I understand you, that in this Red Bound Book there were certain new names, new names had been added? A Yes.

Q What were those new names?

Mr. Pease: Objected to for the reason that the book will show for itself,—best evidence.

A They were the names supposedly of people in the lumber business or using lumber who did not appear in the Red Book.

of Will- Fergu-

Mr. Pease: I move to strike out the answer.

Q Who did not appear where? A Who did not appear in the print of the Red Book.

Q That is, in the previous edition of the defendants' book?

573 Mr. Pease: Objected to as leading.

A Yes. They were names of people who were supposed to be in the lumber business or people using lumber that did not appear in the previous book of the Lumbermen's Credit Association.

Q Did you have anything to do with fixing the ratings of such new names as appeared in the parts of the July, 1901, edition as were assigned to you? A I did, entirely.

Q How did you fix the ratings in those cases? A Where we could secure information from our correspondents we used it, when no information was sufficient to place a rating at the time of the issue of the book we either placed such rating as appeared in the Red Book, or made a rating of one hundred.

Mr. Pease: I move to strike out the answer as not responsive to the question, for the reason that it is not confied to the work done by this witness.

Q Does your last answer refer to what you did? You say "we" did. A What I did, what I have seen others do.

Mr. Pease: I move to strike that out as not responsive to any question.

Q What do you mean when you say you placed such rating as appeared in the Red Book? A If the rating in the Red Book—

Mr. Pease: I object to the question as to what the witness means, that appears from what he says.

574 A If a rating in the Red Book would appear from Bradstreet's and Dun's as showing a man worth $10,000 and either in good credit or prompt pay, the rating was then placed to correspond to this rating in ordinary cases.

Q That is, you adopted the same rating? Is that what you mean?

Mr. Pease: I object to that question for the reason that it is leading.

A Usually.

Q Do you mean that you adopted the same rating?

Mr. Pease: Same objection.

A I stated, I think before, that I did.

Q You say that you saw others using this Red Bound Book; whom did you see using it besides yourself? A Mr. Stadden, Mr. Wright and Mr. Clancy. Deposit iam son.

Q On the same edition, July, 1901? A Yes, sir. Also one other man whose name I can't remember at the present time.

Q You referred to a paper a while ago when you were giving the names of the states. May I look at that paper if you please? (Witness hands counsel paper).

Mr. O'Connor: I will ask the reporter to mark this paper for identification.

Paper marked, "Complainant's Exhibit A, October 9, 1902."

Q Where did you get this paper? A Mr. Clancy.

575 Q When? A At the time I was instructed to take up the state that I was to rate.

Mr. Pease: I move to strike out the answer as not responsive.

Q Was anything said to you by Mr. Clancy when he handed the paper to you? A Told me I would find the states which appeared on here on the table in the center of the room, also to secure the blanks for rating and the black and red book.

Mr. Pease: I move to strike out the answer as not responsive to the question.

Q I notice the whole paper is headed "Book work, July, 1901" what does that mean?

Mr. Pease: Wont you let me look at that?

Mr. O'Connor: Certainly. (Handing counsel paper).

Mr. Pease: All right.

A That shows that this was a work that I am to do on the states mentioned on this paper for the revision of 1901, July book.

Q One of the columns is headed "Book Rtgs." To what does that refer? A That refers to the Red Book, the ratings that appear in the Red Book—Red Bound Book.

Mr. O'Connor: We offer this paper in evidence as Complainant's Exhibit A of October 9, 1902.

Mr. Pease: Objected to as immaterial, incompetent and 576 irrelevant.

Q Mr. Ferguson, take the paper marked Complainant's Exhibit A, October 9, 1902. Will you explain please, each column, the heading that appears in each column of the paper? A "Blanks" first column, means that we take

the revision blanks which were returned by our local correspondents, add such new names as appear and change such ratings as required change, and mark out such firms as the correspondent reported out of business. Second column, "Postals"; take such postals as come in giving the names of anybody supposed to be in the lumber business,—requesting the names, rather, of anybody in the lumber business and kindred lines, and check with the printed list in the book and see that there are no names on the postal which do not appear in the last issue of the book. "Supplementary" is, I believe, from my memory—

Mr. Pease: That is the third column?

A Third column. A blank which comes in later from other sources, I have forgotten exactly what source that comes from, but I think from subscribers. "City yards", is to check those yards which are referred—city yards, or yards where—

Mr. Pease: Don't guess, Mr. Ferguson.

A All right. I decline to answer the city yard question, but as my memory is somewhat faulty in just what the exact term that was, but I think—

Mr. Pease: I object to what the witness thinks.

577 Q Go on, Mr. Ferguson give us your best recollection. A In think the city yards consisted—strike that out.

Mr. Pease: O, no.

A Alo right, I will give it direct then. The city yards are lists which are furnished by firms having yards at other points, giving a list of their yards. Next colums, fifth column, headed "List of subs." is such—

Q What does "subs" mean? A Subscribers. Checking those so that no change will be made in their rating without careful revision and full and complete information which is usually submitted to Mr. Stadden or Mr. Clancy before a change being made.

Q Did you take more pains with subscribers than you did with other names appearing in the books?

Mr. Pease: I object to the question, as leading and calling for a conclusion of the witness.

A Yes.

Q Did you treat subscribers differently from other names appearing in the book? A Naturally.

Mr. Pease: Objected to as calling for a conclusion of the witness.

Q In what manner did you treat them differently? A More care was used in cases of subscribers to secure no error in their ratings, as it antagonized them.

Mr. Pease: I move to strike out the answer as stating
578 a conclusion of the witness.

Q Go on with your explanation. A "Delinquent" reports is left blank here as I believe we had no returns from the office under their names. Headed "Del."

Q If the heading is abbreviated, give us the abbreviation and tell us what it means before you give us the explanation A "Office book." I do not remember exactly what book that refers to in the checking. Book of ratings; that is headed, "Book Rtks." is referring to the checking back of ratings as shown by the Red Bound Book. "Town ref. to other towns". In some cases lumber yards appear as being in a town but the rating is obtained from another town. That heading on this column is to check back such town as referring to other towns to be sure that no town appears with reference to another town where the yard at the town referred to has been discontinued or taken from the book. "Genl. revision" merely means that when all these things have been gone over we check that showing we have finished revision of that state, that is all.

Mr. O'Connor: I will ask to have the Reference book referred to by the witness marked for identification.

Book marked Complainant's Exhibit B, October 9, 1902.

Mr. O'Connor: That is all.

Cross Examination by Mr. Pease.

Q Where are you employed at present, Mr. Ferguson?
579 A Foster Lumber Mercantile Association.

Examination adjourned to 3 o'clock P. M. of this date.

580 October 9, 1902.
3 o'clock P. M.

Met pursuant to adjournment.

Present, as before.

Mr. O'Connor: I want the stenographer to take down a statement that we have subpoenaed Mr. Clancy to bring the parts of the July, 1901 Red Bound Book, of the Lumbermen's Credit Association to which the witness referred in his testimony this morning, and Mr. Clancy refused to bring it.

Will- Mr. Pease: I suggest that the record show the facts with reference to this matter, which are as follows: That Mr. O'Connor asked Mr. Clancy if he had brought certain books, and Mr. Clancy stated that he had not.

Mr. O'Connor: Where are those books, Mr. Clancy?

Mr. Clancy: I don't know, Mr. O'Connor.

Q (Mr. O'Connor) Have you made a search for them?

A (Mr. Clancy) Yes, sir.

Q Haven't you been able to find them? A No, sir.

Q Have you found any parts of the Red Bound Book of the July, 1901 edition of your book? A No, sir.

Q No parts whatever of that book? A No, sir.

Q In your office? A No, sir, haven't discovered any.

Q Are there any Red Bound Books of any other edition in your office?

581 Mr. Pease: I object to that as being incompetent at this time. I advise the witness that he need not answer that question at the present time. We are here for the purpose of cross examining the witness whose testimony was given this morning, and Mr. Clancy has answered all the questions relating to the book called for in the subpoena.

Q Have you made a search for the July, 1901, Red Bound Book in the place where it ought to be in your office? A I have made careful search for them in the office, yes, sir, and didn't find them.

Q Have you any idea where they are? A No, sir, I have not.

Q What do you think has become of them? A I don't know. Those are something that we have no use for particularly, and no particular care taken of them.

Q Do you destroy them? A It was probably sold with old waste paper.

Q Do you dispose of them as old waste paper every year? A Can't tell you; I never had the disposition of them particularly because they weren't considered of any special value.

Q What I want to know is, whether you have heretofore preserved them or not as part of the records of your office? A No, sir, we haven't preserved them as records of our office.

582 Q You have disposed of them each year? A Don't know.

Q In which they were used, after they were used? A Don't know when they have been sold, because I didn't sell them.

Q Don't you remember that you produced a part of that book when you were examined before Master Bishop? A I don't remember that I did.

Mr. Pease: I might state, for Mr. O'Connor's information, that referred to the January, 1902, edition.

Mr. O'Connor: No, it referred—my recollection is that at least a part of the July, 1901, Red Bound Book was produced with other books and papers.

WILLIAM E. FERGUSON cross examination resumed by Mr. Pease.

Q What business is the Foster Lumber Mercantile agency engaged in? A The reporting of lumber firms.

Q Just what is the character and extent of their business? A Good deal the same as Mr. Clancy's.

Q Substantially the same? A What?

Q Substantially the same generally, is it not? A Substantially, yes.

Mr. O'Connor: As what?

Mr. Pease: The Lumbermen's Credit.

A The business of the Foster Agency.

583 Q Where are they located? A Ft. Dearborn Building.

Q In this city? A In this city and state.

Q How long have they been in business, do you know?

Mr. O'Connor: I object to this testimony as immaterial and incompetent.

A I don't know.

Q When did you enter their employment? A Shortly after I left Mr. Clancy.

Q Well, when was that? That is to say, when was it that you entered their employment? A I was doing their local reporting in Milwaukee.

Q During what time? A Well, during—any way, the latter part of the winter of 1902 and the spring of 1902.

Q How soon after leaving the Lumbermen's Credit Association did you enter the employment of the Foster Lumber Mercantile Agency at Milwaukee? A I don't know. I was doing Mr. Clancy's reporting at the same time.

Q And when did you come to Chicago? A In about the middle of June, this year.

Q With whom, representing the Foster Lumber Mercan-

Will- tile Agency did you make your arrangements for the em-
gu- ployment in Chicago?

Mr. O'Connor: Objected to as immaterial and incompetent.

A Why, I don't know whether it was Mr. Wright or Mr. Fish or Mr. Glass, they came to me different times, and
584 my arrangement was entirely by letter. I made them an offer which they accepted, for doing their reporting, for so much a report.

Q What is Mr. Fish's connection with the Foster Lumber Mercantile Agency? A President.

Q When did you first meet him?

Mr. O'Connor: Same objection.

A Considerable time before I met Mr. Clancy; before I went with Mr. Clancy.

Q Can you fix the time more definitely than that? A No, along somewhere the same time I applied to Mr. Clancy I applied to Mr. Fish, that is when I met Mr. Fish.

Q You had no previous acquaintance with him? A No, sir.

Q When did you first meet Mr. Glass? A Never met Mr. Glass to my memory but once.

Q When was that? A In the spring, I think, of 1902 some time.

Q When did you leave the employment of the Lumbermen's Credit Association? A I think about the first of October, of 1901.

Q What were you doing prior to the time you entered the employment of the Lumbermen's Credit Association? A Manager of the National Mercantile Agency at St. Paul.

Q How long were you in that position? A About a year.

585 Q What were you doing prior to that time? A Working for the Bradstreet Company.

Q Where? A Chicago and St. Paul.

Q And for how long were you in their employ? A I was in their St. Paul office as Chief Clerk for about five months.

Q How long were you in their employ altogether? A I don't know, sometime. I was reporter in Chicago for some time, was transferred from this office to that, from reporter here to Chief Clerk there.

Q And then after you left St. Paul, the Bradstreet Com-

pany, you went to work immediately for the National? A Yes, sir, immediately.

Q And what were you doing prior to your employment by the Bradstreet Company? A Worked as clerk in a railroad office.

Q At what point? A Chicago, Burlington & Quincy.

Q In Chicago? A Yes, sir.

Q Which office? A In Bird's, the Auditor of the freight department.

Q When was it that you went to work for Bradstreet? A I don't remember.

Q Can't you give the year? A No, I don't remember at all when I left the employment of the Chicago, Burlington & Quincy; I went in there—quit there in the morning
586 and went to work for Bradstreet next morning. Quit there in the evening, rather, and went to Bradstreet next morning.

Q You don't know whether it was in 1900 or 1899? A No.

Q Or 1898? A I don't remember at all.

Q Mr. Ferguson, how long did you work upon the revision of these states which you testified to this morning, while in the employ of the Lumbermen's Credit Association? A I can't tell you.

Q Well, about how long? A Perhaps three months,—two months.

Q Well, which? A I don't remember.

Q Well, was it two or three months? A I don't remember, I presume about that.

Q That is your best recollection? A Yes.

Q Did you work evenings? A Yes, sir.

Q During that time? A Yes, sir.

Q And of course during the day time as well? A Part of the time.

Q What do you mean by that, Mr. Ferguson? A Part of the time I was working on revisions, part of the time I was working on other work in the office.

Q What other work did you do? A Rating and special reports.

Q What portion of the time did you work on special
587 reports? A I can't tell you.

Q Well, approximately? A Well, I can't give you approximately, because those things are entirely dependent on the work coming in the office.

Q Didn't you put substantially all of your time on this revision work? A Probably,—I think I did.

Q Did you do any other revision work except upon the states you named this morning? A Yes, sir, I did.

Q Where, what territory? A There was some territory in Canada which I worked on.

Q You remember what part of Canada? A Ontario, I think.

Q Was there any other territory now, aside from these states and Canada? A I think not.

Q You are quite sure you worked on Canada, are you? A Yes, sir; that was before we started the regular revision work I worked on Canada, it was not published, however.

Q How long did you work on Canada? A O, very short time, perhaps a week; two weeks.

Q Now, what were your sources of information, Mr. Ferguson, in doing this revision work? A The sources of information were such blanks as we received in the office; such postal cards as reached the office; the Red Book and reports on file.

Q What blanks do you refer to? A The regular revision blanks which are sent out by the company, and other blanks that they use for that purpose.

588 Q What other blanks? A Well, the blanks that the lumber men are in the habit of sending out, regular information blanks, to subscribers, such blanks as are sent to local correspondents, postal cards which they send out, asking for the names of lumber dealers in their town.

Q And what other sources of information? A As I remarked before, what information as we got from the Red Book.

Q I mean now, in addition to these sources which you have already mentioned? A I don't at the present time remember any, there may have been some, though.

Q You don't recall any further sources of information? A Not at the present time, no, sir.

Q Did you not have statements, personal statements? A Those are part of the regular blanks sent out from the office.

Q Well, you had them, did you not? A Yes, sir.

Q And these are separate blanks from the revision blanks? A Yes, sir. There was also another blank that was occa-

sionally sent out, a correspondent blank which was a report upon individual persons.

Q You refer to local correspondent? A Yes, sir.

Q Now, in connection with the personal statements,
589 were there not bank and trade references? A Those are local correspondents also trade references, yes, sir.

Q You had such blanks? A Yes, sir.

Q And did you not also have what is known as tracers? A I don't know as—I fail to remember whether Clancy publishes a tracer or not. Yes, we did, we also had a tracer.

Q You recollect? A Yes, I now recall a tracer, because I have written reports on them.

Q And did you not also have reports from the collection department? A I don't remember.

A That are in the files? A I don't remember of ever handling such a report, but undoubtedly we have them in file.

Q That is a report that is dictated from the collection—result of the collections handled, put in the general file? A Undoubtedly those comprise a portion of the file which I spoke of—usually.

Q Did you not also have numerous newspaper clippings? A Yes.

Q From different newspaper clipping bureaus? A Yes.

Q And did you also use what is called the office book? Do you recall that? A That is the book generally termed the black book, I believe.

Q Well, isn't the office books—don't you remember a book, canvass covered book in which notations are made of changes from day to day through the year? Or perhaps referred to sometimes as the office tickler? A O, yes.
590 Q You remember that? A The tickler used usually, that is what is generally termed as the black book.

Q Then you don't recall an office book or office tickler, in which a record of all the daily changes and new names are inserted? A I do not. I presume that is used by the correspondent, however.

Q Didn't you work on such a book yourself, Mr. Ferguson? A I don't remember it, I may have done so though.

Q Did you also refer to or use what is known as the monthly supplement? A Yes.

Q And delinquent reports? A They were not used, as I remember, during that revision that I had reference to. There was no check made on the list that I had and my mem-

of Will- ory is that they were not sent out that year. They ordi-
rgu- narily did use them, I believe.

Q Do you recall any other sources of information which you used in this revision work which you did on these states? A I do not.

Q What did the files include, Mr. Ferguson, that you refer to? A Such information as we had previously on record upon firms throughout the United States.

Q Will you please describe the revision blank which you referred to, the manner in which it is gotten up, and the use that is made of it? A There is a portion of the print constituting one town cut out from the regular print of the office, as a rule, that is pasted upon a blank which they
591 have for that purpose, and any additional names that they know are in business have been added during the year are written in on that blank and sent to the correspondent.

Q Local correspondents? A Yes, sir.

Q Then what is done with it? A He is supposed to make his notations of their net worth, and such information as he has, and return it.

Q When you refer to the print, you mean the printed portion of the last previously published book? A I do, copy of it.

Q Were these revision blanks sent out over these states which you have named? A Yes, sir.

Q For that revision? A Yes, sir.

Q And will you please explain the statement, the personal statement, what that comprises? A Personal statement is a blank which is sent to the person upon whom the report is wanted, asking them to give a full and detailed statement of their financial condition.

Q And did you have such personal statements covering the states for this revision which you worked on? A Why, in some cases, comparatively few cases had personal statement, however, in doing revision work in any agency.

Q There are references included in these personal statements? A Yes, sir.

592 Q How many, as a rule? A You can't judge how many. Some may give two, sometimes give three and some of them give five or six.

Q That included what kind of references, bank and trade? A Ordinarily they are trade references; occasionally bank references.

Q What information or reports did you have covering this territory from the local correspondents, other than the revision sheets? A Occasionally the personal report which I mentioned before giving only one person; also cards giving the names of dealers in that town.

Q Mr. Ferguson, about how much in volume was there of this information which you describe which you handled on this revision covering these states which wou have testified to? A Give me that paper, I will tell you exactly. (Witness looks at Exhibit A) There is here a notation that there was 186 pages, all told, in that revision.

Q That is, there was 186 pages of the revision? A Yes, sir.

Q No, my question is about how much in volume or bulk was there of this information which you handled? I mean the revision sheets, the reports of the local correspondents, the personal statements, tracers, the reports from the collection department, files,—I mean including the files or records in the office, the clippings, the monthly supplement? A Be impossible to estimate; never had it figured.

593 Q Well, approximately. A Can't approximate it because I never had it anywhere near together.

Q Well, was there a considerable volume of it? A Yes, sir.

Q That occupied the principal part of these two or three months which you spent in this revision, did it not, looking over these different records? A Naturally, the whole thing is part of the revision, that naturally is the work that takes most of the time.

Q Well, as a matter of fact, the mechanical work of writing out the result of your investigation of these different reports took you a comparatively short time did it not, as compared with the time which was occupied in examining the reports? A Yes.

Q Can you approximate the proportion of your time which was occupied in examining these different reports as compared with the writing of the result,—writing out the result? A The actual writing out was practically very little, because the majority of the time is taken up in figuring what rating should be applied to different persons. The only thing that takes any time to amount to anything is writing in new names, other changes are merely putting a letter in or a number or two and crossing out the other.

of Will-
Fergu-

Q Then substantially all of your time was occupied in examining these records and reports?

594 Mr. O'Connor: I object to that as calling for a conclusion, when the witness has stated the facts.

A Yes.

Q Did you not have before your during this revision work, some of this information, some of these different sources of information last referred to upon all of the towns in these states upon which you did the revision work for the July, 1901, book? A I had some of the sources of information first stated as used.

Q What do you mean Mr. Ferguson, "first stated"? A There is, as I remarked before, there is a Red Book—

Q Well, now, I mean aside from the Red Book entirely. Did you not have sources of information, some of these other sources of information aside from the Red Book on every town shown in this July, 1901, edition of the Reference Book published by the defendant, in these states? A I don't remember.

Q You don't remember? A No, sir.

Q Do you remember that you did not have? A I couldn't—

Q Wait a minute. That you did not have some of these sources of information as to every town in these states for that revision? A What sources of information do you refer to?

Q The ones which we have enumerated, aside from the Red Bound Book? A I couldn't specify any particular case.

Q Well, I am asking you; that isn't an answer to my

595 question. A If I would answer that is true, the next question you will spring will be, what case?

Q How do you know? A Well, because I know you will.

Mr. O'Connor: Mr. Witness, answer the questions that are put to you.

Q You are not a mind reader, are you? A That is all right. Mind reader enough for that.

Q Well, we will go one step at a time, and one question at a time. A I can't remember any particular case.

Q Were there any cases,—any town, I mean, I am asking with reference to the town now—were there any towns in these states which you revised shown in the July, 1901 edition of the Reference Book published by the defendant, upon

which you did not have sources of information other than the Red Book—Red Bound Book? A I don't remember.

Q I want your answer to that question, yes or no.

Mr. O'Connor: I object, if the witness can't answer yes or no; he has given you the best answer.

Mr. Pease: It don't do you any good to object.

Mr. O'Connor: I will have the satisfaction of having it in the record.

Q You can't answer that question yes or no? A I cannot.

Q Will you say, Mr. Ferguson, that there were any towns in these states which you revised that appear in the July,
596 1901 edition of the defendants' Reference Book upon which you did not have sources of information other than the Red Bound Books, upon which to base ratings?

Mr. O'Connor: Objected to because the witness has already answered the question.

A I do not remember.

Mr. Pease: Read the question. I ask the witness to please answer my question, it is not answered by "I don't remember". The question is, will you say that there were any such cases?

Mr. O'Connor: I object because the witness has already answered it to the best of his ability.

Mr. Pease: Well, I think the witness is perfectly able to take care of himself, and even anticipate the next question.

A It is a good deal like a man asks a man if he could answer every question, make a correct answer with only yes or no; he said he could; he says, well, have you stopped beating your wife?

Q Well, that is pertinent. A Good deal under the same condition under which you ask me to answer this question.

Q O, no. A If I answer no, I answer practically the same thing, that I don't know that is all I can answer, I don't remember.

597 Q Then you are not willing to say that there are any towns appearing in this edition of the Reference Book upon which you did not have before you as a basis of ratings other sources of information than the Red Bound Book?

Mr. O'Connor: I object, because the witness has repeatedly answered the question.

Mr. Pease: I don't think the witness has answered the question. Read the question.

of Will-
Fergu-

Question read.

A I am unable to state whether there are any or not, any towns of that description.

Q Now, then, Mr. Ferguson, are there any towns in the state of Nebraska appearing in the July, 1901 edition of the defendants' Reference Book upon which you did not have before you other sources of information than the Red Bound Book at the time you made the revision?

Mr. O'Connor: I object.

Mr. Atwood: Counsel now produces to witness copy of the July edition of the 1901 book issued by the defendant, for his inspection in answering this question.

A I can't answer that question any way, it wont help me any. I answered that question before in general and I can't make any other answer in specified states.

Q Is that true of all the states upon which you did the revision work for the July, 1901, edition of the Reference
598 Book which you now have before you?

Mr. O'Connor: What do you mean, if that is true. If his answer applies?

Mr. Pease: Yes.

A I have answered that in previous answer.

Q What do you say now? A Same as I did before, that I do not remember.

Q Do not remember what? A Whether there was any towns in which we had—on which we had no information beyond the Red Book.

Q In these states? A In these states and that I worked on.

Q Now then, Mr. Ferguson, are there any names of persons, firms or corporations in the July, 1901 edition of the defendants' Reference Book in the states upon which you did the revision work for that edition, for which you had no information as a basis of ratings other than the red bound book? A Yes, sir.

Q What ones? A I don't know.

Q What names, Mr. Ferguson? A I am unable to answer that question because I don't remember.

Q You have the July edition of the 1901 book before you, why are you unable to answer it? A If you worked over several thousand names a year and a half ago, with
599 copy before you, would you be able, out of those several thousand names, to pick out any specified names that were worked over in that way?

Q I don't know what I would be able to do. A Well, I am unable to .

Q I am asking you what you are able to do. A I am unable to.

Q Did you refer to the files of the Lumbermen's Credit Association for information for each of the names appearing in this July, 1901 edition of the Reference Book in these states? A No. sir, because I did not have information on all the names. New names never had it.

Q You say you didn't refer to the files for the information? A Not in all cases, no, sir.

Q Then, as a matter of fact, you don't know, of your own personal knowledge, Mr. Ferguson, whether there was information in the files or not, as to all these names— A A O, yes, I do, some of them.

Q —if you didn't refer to the files? A Yes, sir, there was a great many concerns which we looked in the files which they did not have.

Q Which concerns? A Principally Washington, files are very short in Washington.

Q Name them? A I can't.

Q Can you name any? A No, sir.

600 Q Not a one? A No, sir. I had no reason to charge my memory with the names that we did not have the file, never expecting to use it.

Q Did you personally look up the files, Mr. Ferguson, on these states? A On many cases.

Q Did you in all cases? A No, sir, I told you I did not look them up in all cases.

Q I mean, did you do it personally or did you have some one do it for you in some cases? A In many cases looked them up personally.

Q You didn't in all cases then? A No, sir, I did not look up in all cases any way.

Q Well, did other persons look them up for you in some cases? A In some cases, yes.

Q Now you refer to the state of Washington as not having a large number or bulk of files in defendant's records. The defendant had just begun reporting on the state of Washigton, hadn't they, at that time? A Probably, I don't know.

Q Don't you know that is the fact? A No, sir.

Q You don't? A No, sir.

Willgu- Q Now you stated this morning that you were given two keys? A Yes, sir.

Q To work with? A Yes, sir.

Q And that they were typewritten and pasted on manila cardboard? A No, sir.

601 Q That they were typewritten? A Typewritten on manila board,—manila paper.

Q What do you say was at the head of these keys, this manila board or paper, if anything? A My memory is, Bradstreet and Dun. Bradstreet on one, Dun on the other.

Q Is your memory clear on that point? A No, sir.

Q Well,— A Wont be positive; it is my impression that those words appeared on the top of those cards.

Q It is simply an impression? A It is a memory, from the memory of the case.

Q Do you know, as a matter of fact, whether there was any such word or words above these keys?

Mr. O'Connor: I object, because the witnes has said,—stated what his memory was.

A That is my memory.

Q Well, do you know?

Mr. O'Connor: I object because the witness has stated his recollection.

A I answered that question all I am going to.

Q I want to know whether you know or not, or whether you are just guessing at it? A I have given my answer.

Mr. O'Connor: Objected to because the witness has repeatedly stated what his recollection is.

Q What letters were contained in these keys, and
602 what figures did they represent? A I am not sufficiently conversant, at the present time, any more than most men who have not used the key for some time, of the exact lettering, in other words, the exact rating on those keys. My memory is that the key that was used as representing the Bradstreet was somewhere back of the present date key used, but that is merely memory.

Q Well, what was it Mr. Ferguson, if you know? A The letters for Bradstreet's—on Bradstreet's key were two letters.

Q In all instances? A In all instances.

Q And only two? A No, in some cases there is—in the higher ratings there is more than two.

Q What letters are they? A Double A; B.—

Q What letters were they? A —&c.

Q Any others? A I don't remember the exact extent to which those higher ratings run; the Bradstreet keys, however, were in two letters or more letters to designate the worth and credit. On the Dun's they used letters and numbers, also a sign, a cross,—plus.

Q Now, referring to the Bradstreet key Mr. Ferguson, what did these letters indicate, capital rating? A Capital and credit rating.

Q Both? A The letters, yes, sir.

Q And what capital rating and what credit did the different letters indicate? A On this key mentioned, the
603 letters indicating credit and financial rating were explained after each letter.

Q Well, do you remember what that explanation was? A No, sir, I am unable to state.

Q Can you give any capital rating indicated by any of the letters used in the Bradstreet key? A Yes, sir.

Q What letters? A Double A, I believe, signifies a million and over.

Q Well, are you able to state any other? A No, sir.

Q Now, what letters, characters or figures were used in the so-called Dun key? A The letters signifying the financial worth, the numbers the credit.

Q How many letters were used in the Dun key? A I don't remember.

Q What did the letters indicate in financial worth? A I can't give you the key.

Q Can you as to any letter? A No, sir.

Q How were the credit ratings indicated? A By numbers.

Q How many? A Four.

Q How many ratings? A What?

Q How many different credit ratings? A Four. Well, there is more than four. The numbers are used up to four, but placed in different locations mean different ratings.
604 Q Now, then, in how many different positions were these numbers used to indicate different ratings? A I think four; four numbers used in four different locations I think.

Q You remember what they were? A The placing of a number in a different spot opposite a different letter meant a different rating.

Q Well, I know, but what different rating did it mean? A I don't understand that question.

Will-
rgu-

Q I mean, what was the meaning of these numbers as to the credit? A The credit rating, fair.

Q What else? A I can't give them to you in rotation, but meant good, fair, medium, poor, as I remember the key at present time, but it is merely a matter of memory with me.

Q Now, upon what is that credit rating based? A Presumably upon the paying ability, habits in payments, the amount of indebtedness and general character of the men reported upon.

Q Well ,is it, not presumably. Do you know? A I don't work for Dun & Company, therefore I am unable to state.

Q You don't know. As a matter of fact, isn't it based upon the capital rating?

Mr. O'Connor: I object because the witness isn't spaekng of his own knowledge; calls for a conclusion.

605 A I am unable to state what the rating of R. G. Dun & Company is based upon. I remarked before that the different numbers were placed in different positions to designate different amounts of credit in comparison to the amount of capital. In other words, a "4" placed opposite a man's name with a high financial rating means a poorer class of credit than a man who has no financial rating and a "4".

Q Well then, I understand you to say, Mr. Ferguson, that you don't know that the Dun credit rating is based upon the capital rating? A No, you don't understand anything of the sort.

Q Very well then, tell me whether you do understand that the credit rating by the Dun key is based upon the capital rating?

Mr. O'Connor: Objected to because the witness is asked for a conclusion.

A Give me a Dun rating and I will answer that question if you place it more specifically. Dun has a full explanation of their ratings I believe, in the front of their book.

Q Well, does it indicate—does the credit rating in the Dun key indicate the manner of payment? A In a way, yes.

Q What way?

Mr. O'Connor: I object because the witness has stated that he is not speaking of his own knowledge, he is

606 merely giving his opinion.

A These questions are largely asked on a company

which I am not altogether familiar with their manner of doing business, but the credit rating is generally, in most agencies, based upon a man's habits of payment, the amount of indebtedness proportionately to the capital employed or owned by him and such other information as ordinarily would go to granting a credit to any person asking it.

Q Well, you don't know that the credit ratings in Dun's key are based upon those considerations, do you? A What?

Q You don't know that, do you? A I do know their instructions are to base it upon that.

Q The only information furnished by the Dun key is the capital and credit rating, is it not? A Yes.

Q Is the same true of the Bradstreet key? A Yes, sir.

Mr. O'Connor: I object because the Bradstreet and the Dun keys would be the best evidence, and ought to be produced.

A That is true of any agency's key.

Q Is that true of the defendant's key? A Yes.

Q What? A No.

Q Then you were in error in your last answer? A Yes. There is a 33 rating, rate designating a kicker.

Q Has the defendant's key a purely credit rating? A No, sir. Prompt, medium, &c., in the way of payments.

Q Do you know how many pay ratings are used by
607 the defendant in their key? A I do not remember at the present time, and I am not aware whether they changed their ratings either, but I know they use 1, 2, 3, 100 and a 33 rating, or did.

Q When you were with them? A Yes.

Q In the defendant's key what does "1" indicate? A I am not—my memory is not sufficient to state whether that is discount or prompt pay; it is one of the two. I don't remember whether they have a discount rating or not.

Q What does "2" indicate? A These two things, it either means prompt pay or medium pay.

Q What does "3" indicate? A I don't remember; slow pay presumably.

Q What is "3 1/2"? A Slow or medium.

Q What does "3 1/2" indicate? A Very slow pay.

Q What does "33 1/3" indicate—"33 1/2"? A "33 1/2" is either reported by one authority as "kicker", or a kicker.

Will-gu- Q What does the "100" indicate? A "100" indicates not sufficient information in the office. No information in the office to apply rating.

Q You mean, do you not, no information in the office on which to base a rating or credit? A That is the exact wording the book gives, I believe, "base a rating."

Q Is there anything in the defendant's key indicat-
608 ing credit? A That is a question that is largely a matter of the way you place it.

Q I mean, that is so expressed?

Mr. O'Connor: Objected to because the key will speak for itself and is the best evidence.

A There may be a rating, unworthy of credit, I don't remember.

Q Mr. Ferguson, is there not a difference between the credit rating of an individual as expressed in the Bradstreet and Dun keys, and the manner or method of pay as indicated in the defendant's keys as you have already stated, prompt pay, medium pay and slow pay?

Mr. O'Connor: Objected to because the keys would be the best evidence and speak for themselves.

A There is a very close connection between a man who pays promptly and a man who is in good credit generally, or a man who is poor pay and slow pay and a man who is not in good credit. There is sufficient—

Q May there not be such a thing as a man being slow pay and yet have a good credit? A First class credit, no, sir.

Q Or ample credit? A Ample credit financially on account of the fact that if he was very well off he might be able to secure ample credit, but his credit wouldn't be first class.

609 Q Now take a man say, under the Dun key that is rated at a million— A Yes.

Q Now he might be slow pay— A And would be given second grade credit, or third grade credit.

Q How do you know; is there anything in the key to indicate that the credit rating is based upon the method of payment? A Dun's book has full and explicit directions in regard—

Q Is there anything in the Dun key which indicates that the credit rating is based upon the manner or method of payment?

Mr. O'Connor: Objected to because the key is the best evidence and will speak for itself.

A Man who is in poor credit—

Q I am not speculating, Mr. Ferguson, I have got a direct question here.

Mr. Pease: Read it.

Question read.

A. Generally supposed to.

Q No, but is there, we are not dealing in suppositions.

Mr. Atwood: If you know?

A Supposed to be based upon the payments, that is the best I can say.

Q Mr. Ferguson, is there in the Dun key any other information indicated or conveyed aside from the capital and credit rating? A No, sir.

610 Q Is there in the defendant's key? A Yes, sir.

Q Do you remember about how many items,—about how many different items of information there are in the defendant's key aside from the capital rating?

Mr. O'Connor: I object, the key is the best evidence.

A No, sir; large number of them are not used.

Q I didn't ask you how many are used; how many are indicated? A I don't remember.

Q About one hundred, aren't there? A I don't remember.

Q Will you look at the key on the inside of the front cover of the July edition, 1901, of the defendant's Reference Book and state how many other items of information are— A Apparently there is 115—116—117.

Mr. O'Connor: We object because the book will speak for itself.

Q What are they? A More than that, in fact. You wish me to read all these off?

Mr. O'Connor: I object.

A That is going to take half an hour. You better have them copied. "Prompt pay. Medium pay."

611 Let us have the— A 1 Prompt pay; 2 Medium pay; 3 Slow pay; 3 1/2 Cery slow pay; Parties that you decline credit, on account of trouble in collecting, and for various reasons. 5 Pay notes but slow

612 on open accounts. 6 Draft returned unpaid. 7 If interested inquire at office. 8 Recently commenced business. 9 out of business. 10 Conveyed real estate. 11 Accepted draft or note returned unpaid. 12 Asking gen-

will- eral extension. 13 part buys with questionable intentions.
14 Intemperate. 15 Does not attend to business. 16 Suit.
17 Reported failed. 18 Sold or selling out. 19 Asking temporary extension of one or more. 20 Partnership dissolved.
21 Deceased. 22 Closing or selling out. 23 Chattel mortgage. 24 Works with borrowed capital. 25 Considered weak. 26 Left town. 27 Property known to be in his or her name. 28 Pay when the law compel them to. 29 Pay when they get ready. 30 Reported no property within the reach of law. 31 Will not settle. 32 Inclined to be dishonest or tricky. 33 Complain of quality of stock or shortage and made deductions. 33 1/3 Reported by one authority as complaining of quality of stock or claiming shortage and making deduction therefor. 34 Offering to compromise. 35 Continues in business. 36 Burned out. 36 1/2 Partially burned out. 37 Fully insured. 38 No insurance. 38 1/2 Partially insured. 39 Reported insolvent. 40 Compromised.
41 Filed petition in bankruptcy. 42 Suspended. 43 Reported assigned. 44 Will not accept drafts. 45 Slow pay but considered responsible. 46 Failed recently. 47 Honest and industrious. 48 Note or accepted draft protested.
613 49 We have late report at office. 49 1/2 Account runs thirty days past due. 50 Account runs sixty days past due. 51 Account runs ninety days past due. 52 Account runs four months past due. 53 Account runs six months past due. 54 Account runs nine months past due.
55 Account runs one year past due. 56 Attached.
57 Name left out of book. 58 Will not answer letters. 59 Have asked for statement of his or their business. 60 Refused to give statement. 61 Have sent for late report. 62 Sued and judgment rendered. 63 Regarded as consumers by retail lumber association. 64 Caution advised. 65 Hard to collect from. 66 Collection at office not paid. 67 Collection at office paid. 67 1/2 Disputed collection at office paid.
68 Sued on disputed account. 69 Rating suspended. 70 Rating withdrawn. 71 Closed by execution. 72 Real estate or chattel mortgage released. 74 We have his or their statement at office. 75 Poor business qualifications. 76 Sometimes sued to compel settlement. 77 Real estate mortgaged. 78 Receiver appointed. 79 Called meeting of creditors. 80 Reported refused shipment because market declined after order was placed. 81 Reported cancelled order after shipment was made. 82 Will not pay interest on past due accounts. 83 Will not give references. 84 Refused to pay

exchange. 86 Accepted draft or note runs thirty to sixty days past due. 87 Accepted draft or note runs sixty to ninety days past due. 88 Accepted draft or note runs three to six months past due. 89 Should not be sold without inquiry at office. 90 Should be sold with caution. 91 Liquidating. 92 Mortgage foreclosed. 93 Mortgage discharged. 94 Given trust deed. 95 Compromising. 96 Limited capital considered good for small line of credit. 97 Some members sell others refuse credit. 98 Members will please give their experience favorable or unfavorable on this party or parties. 99 Pay and credit not established. 100 No information at office to base rating or credit upon. 101 Claim by statement to be worth. 102 Getting behind in payments. 103 Collection note placed in our hands and paid thirty to sixty days past due. 104 Collection note placed in our hands and paid sixty days to four months past due. 105 Collection note placed in our hands and paid four to six months past due. 106 Collection open account placed in our hands and paid thirty to sixty days past due. 107 Collection open account placed in our hands and paid sixty days to four months past due. 108 Collection open account placed in our hands and paid four to six months past due. 109 Succeeded by. 110 Incorporated. 111 Confessed judgment. 112 Receiver applied for. 113 Given bill of sale.

615 Q From whom connected with the Lumbermen's Credit Association did you receive your instructions regarding this revision work? A Mr. Clancy.

Q Did you receive any instructions from any one else? A I may have from time to time.

Q Well, did you? A I don't remember.

Q Will you say whether you did or not?

Mr. O'Connor: I object because the witness stated.

A I don't remember any particular case; I may have received some from Mr. Stadden, as I received instructions from him in one way and the other.

Q Then all of the instructions which you have testified to in this case you received from Mr. Clancy, did you? A I believe I did. I did.

Q Did you receive instructions from any one else regarding this revision work besides Mr. Clancy and possibly Mr. Stadden? A May have possibly in some particular case from Mr. Wright, but I don't remember of having received any.

Will-
rgu-

Q Do you remember any such case? A No, sir, I do not remember of having received any.

Q Then the instructions which you stated in your testimony this morning you received from Mr. Clancy? A Yes, sir.

Q On page 12 you referred to having made ratings of 100? A Just read that please, on page 12.

Q "Where we could secure information from our cor-
616 respondents we used it, when no information was sufficient to place a rating at the time of the issue of the book we either placed such rating as appeared in the Red Book, or made a rating of one hundred." The rating of 100 you have already explained? A If my memory serves me I did.

Q. Mr. Ferguson, who first talked with you about testifying in this case? A Mr. Glass, I think.

Mr. O'Connor: Objected to as immaterial.

Q What Mr. Glass do you refer to? A Formerly connected with the Foster Lumber Mercantile Agency.

Q When was that?

Mr. O'Connor: Same objection.

A Some time in the spring, according to my memory, early.

Q Of what year? A This year.

Q Can you fix the time? A No, sir.

Q Fix the month? A No, sir.

Mr. O'Connor: Same objection.

A Merely came in a matter of—in ordinary conversation in which he notified me, it was the first I had heard of it, that there was such a suit and he asked me if I would appear, if I could give any information, and I told him at that time that I knew of no information I could give.

Q What further did he say to you? A Very little;
617 I don't remember exactly the conversation. It took place as I said, merely in an ordinary conversation carried on between ourselves on another subject.

Q Have you stated all that he said to you at that time? A No, sir.

Q I mean on this subject? A I don't remember.

Q Well, do you remember anything else that he said to you at that time about this suit? A No, sir. This conversation made very little impression on me and I paid no special attention.

Q Was that before you went to work for the Foster Agency? A About that time.

Q In Chicago? A I think that was the time when I was making my contract with him, but I don't remember whether I made it at that time or not; it was at the time he was talking about reporting that our conversation was first commenced.

Q You say that you were making your contract with him at that time to come to Chicago?

Mr. O'Connor: The same objection to each of these questions.

A That was the reason that we met, to arrange for the reporting in Milwaukee by myself. The other matter was merely brought up in the matter of the conversation.

Q Was that the first conversation that you had with Mr. Glass or any one connected with the Foster Agency about your employment? A Yes, sir, in a capacity of reporting for Milwaukee.

618 Q Did Mr. Glass state to you at that time that the Foster Agency were interested in this proceeding?

Mr. O'Connor: Objected to as immaterial.

A No, sir.

Q But he did— A He did not.

Q He did ask you if you would appear and testify in this case?

Mr. O'Connor: Same objection.

A Asked me if I knew anything about it, I believe.

Q Well, didn't he tell you that the Foster Agency was back of this proceeding in pushing it?

Mr. O'Connor: Objected to.

A No, sir.

Q Nothing of the kind? A No, sir.

Q When did you find out that they were back of it

Mr. O'Connor: I object to it.

A I haven't found out yet.

Q Have you talked with Mr. Glass since that time? A No, sir.

Q About this case?

Mr. O'Connor: Objected to as immaterial.

A No, sir.

Q What? A Never talked to him since that time on any subject.

Q Did Mr. Glass at that time show you any paper or papers?

of Will-
ergu-

Mr. O'Connor: Objected to.

619 Q Relating to this suit?

Mr. O'Connor: Objected to as immaterial.

A I believe the only paper that was shown to me prior to coming to Chicago was one that was sent me by Mr. Clancy.

Q Well now, I asked you if Mr. Glass— A That answered that question, I think the only paper shown me on the subject—

Q It don't answer the question, and it shows that you are not real fair about it, Mr. Witness, because I asked you— A Mr. Glass did not show me any paper in reference to this suit at any time.

Q It would have been very easy for you to have said so. A I was trying to answer further questions at the same time, that the only paper I knew of seeing on the subject was what Mr. Clancy sent me.

Q Did you ever have any talk with Mr. Fish about this case?

Mr. O'Connor: Objected to as immaterial.

A I presume I had some general conversation with him, nothing material.

Q When first?

Mr. O'Connor: Same objection.

A I don't remember; see Mr. Fish a great many times in Milwaukee and in Chicago and it might have been at any one of those times we conversed on the subject.

Q Mr. Fish that you refer to is the President of the Foster Agency? A Yes, sir.

620 Q Didn't Mr. Fish tell you before this suit was brought that such a suit would be commenced?

Mr. O'Connor: Objected to as immaterial.

A No, sir.

Q With whom did you first talk about testifying in this case? A I don't remember.

Q What, sir? A I don't remember.

Q How many people have you talked with about testifying in this case? A Perhaps three or four.

Q Who are they? A Mr. Fish.

Q President of the Foster Agency? A Yes, sir. Mr. Biederman, Secretary of the Foster Agency, my cousin Mr. Lewis, connected with the Bradstreet company, possibly; Mr. O'Connor the day he served me with a subpoena to appear

here. Also I was called into that other attorney's office whom I do not remember the name of, Mr. Abbott, I think.

Q When was that?

Mr. O'Connor: Objected to as immaterial.

A Some weeks ago, don't remember exactly when.

Q Are these all the persons with whom you have conversed with reference to this case?

Mr. O'Connor: Same objection.

A I don't remember. No, I presume not because it is a case that is talked about, and I have talked about the case with many other people probably, the same as I would

621 in any interesting case.

Q With whom else have you talked about this case?

Mr. O'Connor: Same objection.

A I don't remember.

Q Whom else have you talked with about your testimony, about testifying in this case? A I don't remember any except those persons mentioned, my cousin and others, and Mr. Abbott and Mr. O'Connor.

Q Who was present when you talked with Mr. Abbott?

Mr. O'Connor: Objected to as immaterial.

A Mr. Fish.

Q Any one else? A No, sir, not that I remember.

Q Where did you have this conversation with Mr. Abbott?

Mr. O'Connor: Same objection.

A Mr. Abbott's office.

Q How did you come to go to Mr. Abbott's office?

Mr. O'Connor: Same objection.

A I was instructed to go there by Mr. Fish, with him.

Q Who, if any one, went with you to Mr. Abbott's office?

A Mr. O'Connor: Same objection.

A Mr. Fish.

Q What did Mr. Fish say to you at that time?

Mr. O'Connor: Same objection.

A Said he wanted me to talk with Mr. Abbott, as Mr. Abbott wanted to know something regarding the case.

622 Q What case?

Mr. O'Connor: Same objection.

A The case that I am now witness in.

Q This case? A Yes, sir.

Q Dun against Lumbermen's Credit Association? A Yes, sir.

of Will-Fergu-

Q What else did Mr. Fish say to you?

Mr. O'Connor: Same objection.

A I don't remember, nothing except ordinary conversation.

Q Well, what was that ordinary conversation?

Mr. O'Connor: Same objection.

A I don't remember.

Q Did Mr. Fish say anything about why they went to see Mr. Abbott instead of Mr. O'Connor?

Mr. O'Connor: Same objection.

A No, sir. No explanation was made to me one way or the other.

Q Did you know that Mr. Abbott was the attorney for the Foster Agency, or Mr. Moberly, the principal stockholder?

Mr. O'Connor: Objected to as immaterial.

A No, sir.

Q Did you know it at that time? A Don't know it now.

Q I thought you said you didn't know it. A No, sir, I do not.

Q Isn't that the fact?

Mr. O'Connor: Same objection.

623 A I don't know.

Q When did you talk with Mr. Biederman, the Secretary of the Foster Agency? A After I was employed in their office.

Q I mean about this case? After I was employed in their office.

Q How soon after you was employed in the office did you first talk with him?

Mr. O'Connor: Same objection.

A Don't remember.

Q About how long? A As the matter made no particular impression, it was merely ordinary conversation, I don't feel that I can make any estimate whatever.

Q What did he say to you about this case?

Mr. O'Connor: Same objection.

A Don't remember that, merely conversation, general conversation that such a suit had been brought, in regard to what was done.

Q You said that you talked with him about testifying in this case? A Yes, sir.

Q Now what did he say to you?
Mr. O'Connor: Same objection.
A He asked me what I knew about it; asked me what I knew about Wright, and several other cases; the questions were entirely a matter of personal conversation which I placed no particular stress upon.
624 Q What did you say to him?
Mr. O'Connor: Same objection.
A Don't remember.
Q Say anything to him? A I presume I did.
Q How long did you talk with him?
Mr. O'Connor: Same objection.
A All the way from one minute to ten, perhaps, on the subject.
Q Have you talked with him since?
Mr. O'Connor: Same objection.
A I presume so, yes, sir; in fact, I know I have.
Q Several times?
Mr. O'Connor: Same objection.
A Did this afternoon.
Q Beg pardon? A Did this afternoon, prior to leaving the office.
Q What did he say to you this afternoon?
Mr. O'Connor: Same objection.
A Nothing particular, he asked me where I went this morning.
Q What else?
Mr. O'Connor: Same objection.
A Told him I came over here.
Q Well, what did he say?
Mr. O'Connor: Same objection.
A Nothing further. I told him I wanted to get off,
625 he says, all right, how long will it take you.
Q How long did you talk with Mr. Abbott and Mr. Fish at the time you went to Mr. Abbott's office?
Mr. O'Connor: Same objection.
A Only a few minutes.
Q Well, how many; thirty or forty? A No, perhaps five or ten, not to exceed; large part of that time was taken up in general conversation.
Q Have you been there since? A No, sir, never been in Mr. Abbott's office since.
Q When did you talk to Mr. O'Connor?
Mr. O'Connor: Same objection.

Q First? A To-day; this morning.

Q This morning? A When the paper was served on me.

Q Was that the first time you talked with Mr. O'Connor about testifying in this case? A Yes, sir. I never seen Mr. O'Connor until this morning.

Q When did you talk with him last?

Mr. O'Connor: Same objection.

A Some time during the course of the day.

Q That was after the adjournment this morning, wasn't it? A Yes, sir, and before we commenced this noon.

Mr. O'Connor: Same objection.

Q How much, if anything, were you paid as witness fees in this case? A Never paid a cent.

626 Q Did you demand or request any? A No, sir.

Q When were you served with subpoena? A This morning.

Q Where? A On La Salle street.

Q Well, what point on La Salle street? A It was Mr. O'Connor's office.

Q How did you come to go to Mr. O'Connor's office? A I received orders to go there from Mr. Biederman, in answer to a letter of Mr. O'Connor's requesting that I appear. I have the letter in my pocket.

Q Letter addressed to you? A No, sir.

Q Let us see the letter? A Guess it is in my overcoat, however, it is a letter addressed to Mr. Biederman requesting him to come to their office and bring me.

Mr. O'Connor: If you can find the letter, hand it to counsel.

A It is in my overcoat, you will have to send a messenger boy if you want it.

Mr. O'Connor: I will furnish you with a copy, if you will take my word for it, and let him get the original. If this examination isn't finished to-day, bring that letter with you tomorrow, if you please.

A Yes.

Q Who went with you, if any one, to Mr. O'Connor's office? A Nobody did? Mr. Biederman was busy and asked me to go over; said if Mr. O'Connor needed him for
627 anything particular that he could call him up by telephone; asked me if I knew where the office was and gave me this letter so as to show me where to go, that is the reason the letter was handed to me.

Q Was that all Mr. Biederman said to you this morning?

Mr. O'Connor: Objected to as immaterial.

Q About testifying? A Going over there, yes, sir.

Q Testifying in this case? A Yes, sir.

Q When did you first talk with any one connected with R. G. Dun & Company's Agency about testifying in this case? A Do you consider Mr. O'Connor as being connected?

Q Yes, sir, certainly is. A Well, this morning, far as I know. I don't know—I have never conversed with anybody connected with R. G. Dun & Company's except Mr. O'Connor, that I am aware of.

Q Didn't Mr. Fish or Mr. Glass ever show you a list of names in connection with this matter?

Mr. O'Connor: Objected to as immaterial.

A No, sir.

Re-Direct Examination by Mr. O'Connor.

Q You have referred to a Mr. Wright several times in your testimony. A Yes, sir.

Q What Wright do you refer to? A Mr. Wright who was formerly employed by the Clancy people, afterwards employed by Foster and then went back to Clancy.

628 Q Is that Fred Wright? A Yes, sir.

Q For whom is he now working? A Mr. Clancy, I understand.

Q The Lumbermen's Credit Association? A Yes, sir.

Q How long has he been in their employ? A I am unable to state. He was employed by him for some time, I don't know when he left him exactly, or when he went back to him. I understand that he went to him some time ago.

Q You stated that during the two or three months that you spent on the revision work, you did other work; what was the character of the other work that you did? A Dictated rough reports, also rated special reports.

Q That occupied quite a little of your time, didn't it? A Portion of my time.

Q Did you do a portion of that work every day? A Yes, sir.

Q Did it occupy more of your time some days than other days? A Yes, sir.

Q Did it occupy most of your time some days?

of Will-Fergu-

Mr. Pease: I object to the question as leading, as all of them have been.

A Yes, sir.

Q What? A It did.

Mr. Pease: I move to strike out the answer.

Q You stated that in fixing the ratings in the states which you revised, you used information of various kinds— A Yes, sir.

629 Q —so far as you had it. Did you have all that information in every case?

Mr. Pease: I object to the question as leading.

A No, sir.

Mr. Pease: I move to strike out the answer.

Q Were there cases where you had no other information, cases of names, I mean, where you had no other information but the ratings as they appeared in the Red Bound Book?

Mr. Pease: I object to the question for the reason that it is leading.

A Yes, sir.

Mr. Pease: I move to strike out the answer.

Q You were asked whether you referred to the files in all cases for information on fixing rates? Did you refer to the files in all cases in fixing the rates, where there were files?

Mr. Pease: I object to the question for the reason that it is leading.

A When we had any reason to suppose there was any possibility of any files, yes, as a rule.

Q In fixing the ratings did you use the files in the office so far as you knew there were any files in the case?

Mr. Pease: Objected to as leading.

A When it required any change, yes; in some cases no change was required by the information that came in
630 from the previous rating therefore we didn't look those up as the rating that had appeared in the book appeared to be the same as it was, supposed to be the same as that in the book at the present time.

Q I understood you to say this morning that in the case of every name you referred to the Red Bound Book.

Mr. Pease: I object to the question as leading and not re-direct examination.

Q Am I correct? A If there was any change whatever, we did.

Mr. Pease: I move to strike out the answer.

Q If in any case you found a difference between the rating as it appeared in the defendant's book and the rating of the same person, firm or corporation as it appeared in the R. G. Dun & Company's book or Bradstreet's book, did you refer to any files if there were any? A Yes, sir.

Mr. Pease: I object to the question for the reason that it is leading. For the further reason there is no evidence that the witness used R. G. Dun's book or Bradstreet's book during this work.

Q In such a case where the rating of the defendant differed from the rating of Dun & Company or Bradstreet, did you always find fiiles?

Mr. Pease: I object to the question as leading.

A No, sir.

631 Mr. Pease: I move to strike out the answer.

Q You say that the only paper which you have received on the subject of this suit since you had the interview with Mr. Glass, is a paper you received from Mr. Clancy? A I suppose so.

Q What kind of paper was it? A Merely a circular letter he sent out, and a newspaper clipping.

Q What was the nature of the papers?

Mr. Pease: Objected to; the paper is the best evidence.

A I don't remember; merely a newspaper clipping stating such a suit had taken place, or something to that effect.

Q Did he correspond with you on the subject, write any letter to you on the subject at any time? A Yes, sir.

Q When you say that you at first told Glass that you had no information to give in the case, what do you mean?

Mr. Pease: I object.

Q I didn't care to get mixed up with the case in any way, shape or form, and as I told Mr. Glass, I could see no information I could give further than anybody that they could secure from their office could give. In fact, I believe I specified that my information would be no different than what Mr. Wright, who was then employed as I believe had given in testimony.

Mr. Pease: Employed by whom?

632 Q You refer now to the affidavit which Wright made in the case?

Mr. Pease: I object.

A I had not seen the affidavit, I knew nothing which he had given except I knew he had testified. I don't know now,

of Will- erguson

to the full extent what he testified to. My information that he had testified came from Mr. Clancy I believe, or the newspaper clipping.

Q You said that the states which you revised covered 183 pages of the defendant's book, did you not? Q It is on that list there, I presume that is the amount I gave.

Q The number marked on the paper? A The number marked on that paper I believe is correct.

Q The paper which was offered in evidence this morning, paper given to you by Mr. Clancy. Do you know about how many names are on a page of defendant's book? A No, sir. They vary. Where there is a number of small towns the names are very much less than where there is a large town, because a large town is solid print.

Re-cross Examination by Mr. Pease.

Q In what case in which the rating given in the defendant's book differed from the rating given in Dun or Bradstreet did you not find any information? A I can't—

633 Q Did you fail to find any information in the records or files of the defendant's office? A That is the old question that I have told you I was unable to answer before.

Q This is a brand new question.

Mr. Pease: Read the question; I want the witness to answer it.

A I am unable to specify.

Q Can you name one such case? A No, sir.

Q Mr. Ferguson, did you do all of the work on the revision of these states which you have named, for the July, 1901 edition of defendant's Reference Book? A I think I did.

Q Well, don't you know that Mr. Stadden did some work upon the revision of these states for that edition? A I am not aware of the fact.

Q He may have done so for all you know? A O, yes.

Q And there may have been work done by others? A It is always possible when things are not in your possession, consequently work may have been done.

Q May have been changes made by others in the way of corrections from the tickler after you had finished a given portion of the work?

Mr. O'Connor: Objected to.

A Always possible when the work is not constantly

634 in a person's possession.

Q And don't you know that changes are frequently

made and were made in the way of corrections in the copy, in the printer's copy, I mean, in the proof? A Those were made by the person—the printer's proof was constantly returned until the last issue is out. The printer's proof is returned to the person who actually made the mistake for their correction. Depos iam son

Q Don't you know there were corrections made on the printer's proof on these states by other persons than yourself? A Proof reading corrections perhaps, I don't remember even that.

Q Don't you know that other changes were— A No, I don't know anything about it.

Q —made in the printer's proof by other persons than yourself? A No, sir, not those states that I rated.

Q What do you mean to say, that they were not made or that you don't know that they were made? A Don't know that they were made.

Q In this paper which you produced this morning, marked Exhibit A, there appears a double check in the columns headed "list of subs." and "Book ratings"; will you please explain— A I don't remember the—

Q —what that double check indicates? A I don't
635 remember at the present time what I put that double check on there for, too far back.

Q Was it put on at that time? A Yes, sir.

Q You are certain of that? A Yes, sir.

Further examination is adjourned to Monday, October 13, 1902, at 2 o'clock P. M.

636 October 17, 1902.
2 o'clock P. M.

Met pursuant to agreement.
Present as before:

W. C. THORBUS called as a witness on behalf of complainant, being first duly sworn, testified as follows: Depos C.

Direct Examination by Mr. O'Connor.

Q State your name? A W. C. Thorbus.

Q What is your business? A Chicago Circular Typewriting Company, we get out circular letters.

w. Q Are you the proprietor of that business? A Yes, sir.

Q You have your own business under that name? A Yes, sir.

Q What is the nature of the business? A We get up typewritten circular letters and address them.

Q Do you do any other work, any printing? A No.

Q Do you know Mr. William Clancy? A Yes, sir.

Q Do you know Mr. Burton Stadden? A Yes, sir.

Q Do you know the Lumbermen's Credit Association? A Yes, sir.

Q With which they are connected? A Yes, sir.

Q Have you ever done any business for that concern?
637 A Yes, sir.

Q What was the nature of the business that you did for that concern?

Mr. Pease: Objected to as immaterial, incompetent and irrelevant.

A We get out circular letters for them once in a while; we enclose and fold their circulars and send them out for them.

Q Did you ever do any work for them on their reference book? A Why, I guess that is what it is, reference book.

Q Well, did you ever do any work on the reference book yourself? A Well, I don't know whether you would say it was on the book itself or not.

Q Well, what would you say about it? A Well, we had lot of sheets of people, that is lots of their sheets, I suppose come out of the book, I don't know anything about it.

Q What was the character of the sheets? A They were narrow sheets pasted on to other sheets,—white sheets of paper.

Q Look at the paper which I now show to you and state whether that is like the sheets to which you refer? A Couldn't say. I don't think so.

Q Describe the sheets to which you refer. A Well,
638 there was a white piece of paper with the printed slip pasted on the middle, that is all I know.

Q Describe the printed slip. A Well, I can't describe it. It was a narrow slip of paper with a lot of names on them as far as I can remember, and,—I don't know, figures.

Q That was pasted on a larger slip? A Yes, sir.

Q Did it leave any margin on each side of it? A Sure.

Q What did you do with that sheet? A I didn't do anything, I turned the books over to others. Depos C. T

Q To whom? A Evans and Kelly.

Q Where are Evans & Kelly located? A Same building we are.

Q What is their business? A Addressing, folding, enclosing.

Q How many papers of the kind you have described were handed to you? A Can't remember.

Q Give us some idea of the amount. A Can't do it.

Q You can't give us any idea of the quantity? A Well, there may have been a dozen, may have been two dozen, may have been a hundred or more, I don't know.

Q How did you get them? A They came to me,—well, what do you say?

Q Where did you get them? A From the Lumbermen's Credit Association.

Q How? Who handed them to you? A I don't know.

Q Under what arrangement did you get them?

639 Mr. Pease: We object to that for the reason that it calls for a conclusion of the witness. If any ararngement was made, what was said, or if there was a writing, we want the writing.

A I don't know what you mean.

Q You must have made an arrangement with somebody before these papers were handed to you, must you not?

Mr. Pease: Object to the question for the reason that it is argumentative and leading.

Q Answer the question. A I talked with somebody at the Lumbermen's Credit Association.

Q Where did the conversation occur? A At the Lumbermen's Credit Association offices.

Q Where is it, or where are they? A Tacoma Building.

Q With whom did you talk? A Both Mr. Stadden and Mr. Clancy, I think.

Q What arrangement was made between you and Mr. Stadden and Mr. Clancy, or either of them, in regard to those papers?

Mr. Pease: I object to the question for the reason that it calls for a conclusion of the witness.

Q What did they say and what did you say?

Mr. Pease: Object to the question.

Q When you talked with them about the papers? A Don't remember the conversation at all.

W. Q Did you enter into any agreement with them in regard to the papers?

640 Mr. Pease: Objected to as calling for the conclusion of the witness; any agreement is shown in what was said and done.

A I don't know; why, of course—they gave me an order to go ahead and work on the books, that is all I know about it.

Q What was the order?

Mr. Pease: Objected to as calling for the conclusion of the witness. I move to strike out the answer as not responsive.

A Well, we were to use these books and transfer new names from the Dun book on to these slips.

Q R. G. Dun & Company's book? A Yes, sir.

Q What were you to transfer from R. G: Dun & Company's book to these slips?

Mr. Pease: Objected to as calling for a conclusion of the witness; and the witness has already stated.

A Well, far as I can remember we were to transfer new names from Dun's book on to these slips.

Q Were you not to transfer ratings from R. G. Dun & Company's book to these slips?

Mr. Pease: Objected to as leading.

A Yes, sir. New names and ratings.

Q What ratings were you to transfer from R. G. Dun & Company's book to these slips? A What ratings?

Q Yes. A Why, ratings for these new names.

641 Q Were you to transfer any other ratings from R. G. Dun & Company's book to these slips? A Not as I remember.

Q Were you to make any comparison between the ratings on the slips and the ratings given in R. G. Dun & Company's book to the same names? A I don't remember.

Q When was this arrangement made between you and Mr. Clancy and Mr. Stadden? A Couldn't tell you.

Q In what year? A Why, I think it was last year.

Q When did you do the last of that kind of work for the Lumbermen's Credit Association? A I don't remember that.

Q In what year? A I think it was last year.

Q 1901? A Yes, sir.

Q In what part of that year? A Why, the fall, I think.

Q In what part of the fall? A Well, I don't remember the month, it was in the fall some time, I couldn't tell you the month.

Q Did you ever do any work of that kind for them before? A I think we did.

Q When did you first begin to do work of that kind for them? A I think it was in the spring of the year, last year.

Q Didn't you do work of that kind for them before last year? A No, sir.

Q Before 1901? A No, sir.

Q For how many editions of their work did you do 642 work of that kind for them?

Mr. Pease: Objected to.

A I don't know.

Q When did you do the work in the spring of last year, what month,—about what month? A I couldn't tell you the months.

Q What was the character of that work? A The same as the other.

Q You made the contract for the work, did you? A I took the order.

Q Was it in writing? A No, sir.

Q What new names were added to the slips? A I don't know; don't remember that at all.

Q You didn't do the work yourself? A No, sir.

Q You turned it over to Kelly & Evans, as I understand you? A Yes, sir.

Q Did you give them instructions as to the work that they were to do? A Certainly.

Q On the slips? A Yes, sir.

Q Do you remember what instructions you gave them? A I do not.

Q After the work was done was it handed to you? A Yes, sir.

Q What did you do with it? A Sent it back to the Lumbermen's Credit Association.

643 Did you notice the work after it was done? A Not particularly.

Q To see what was on the slips? A No, sir.

Q You don't remember now what was on the slips when the work was returned to you? A No, sir.

Q Do you remember what was on the slips when the first work was returned to you? A No, sir.

Q Do you remember who brought the slips to you? A No, sir.

Q Or gave them to you? A No, sir.

of w. Q When they were handed to you was R. G. Dun & Company's book handed to you? A No, sir.

Q Where did you obtain their book? A I was a subscriber.

Q For R. G. Dun & Company's book? A Yes, sir.

Q You obtained the names and ratings from your copy of their book? A Yes, sir.

Q Did you use Bradstreet's book in connection with the slips? A Aint necessary to answer, is it?

Q Yes, I insist upon an answer. A Well, I refuse to answer.

Q Do you still do business for the Lumbermen's Credit Association? A Yes, sir.

Q How long have you known Mr. Clancy? A Couldn't tell.

Q How many years? A That I—

644 Q To the best of your recollection? A One or two, I don't know; two, I think.

Q How long have you known Mr. Stadden? A O, I have known him three or four.

Q In what condition was your book when Kelly and Evans' men took the ratings from it, I mean your copy of R. G. Dun & Company's book? A Cut to pieces.

Q It was taken to pieces? A Yes, sir.

Q How were the parts distributed among Kelly and Evans' men? A Give it up.

Q Did you ever go into their place while their men were at work upon— A I go in and out every day.

Q —the slips? Did you notice how they were doing the work? A Not particularly.

Q Well, you have used the word "particularly" several times; what is your recollection as to how they did the work on the slips? A I have no recollection.

Q How many men were working upon it? A I couldn't tell you.

Q How long were they working upon it? A I couldn't tell you that.

Cross-Examination by Mr. Pease.

Q Are you doing work for R. G. Dun & Company at the present time? A Yes, sir.

645 Q Were there new names and ratings transferred from any other agency's book on to these slips? A Yes, sir.
Mr. Pease: That's all.

Re-direct Examination by Mr. O'Connor.

Q What other books? A Aint going to answer that.
Q Why couldn't you answer it? A I can answer but I don't want to.
Q You refuse to answer? A Yes, sir.
Q Are you acquainted with Atwood & Pease, the solicitors of the defendants in this case? A Just met them.
Q Mr. Pease, and that is Mr. Atwood (indicating). A I just met them, I am not acquainted with them, at all.
Q Have you ever talked with them? A Yes, sir.
Q Talked with them about this case? A Yes, sir.
Q When did you talk with them about this case? A The other day.
Q Where? A Over at their office.
Q Did they send for you? A No, sir.
Q How did you go to their office? A I went over to see them.
Q At whose solicitation? A My own.
Q Nobody had suggested it to you? A No, sir.
Q Why did you go to see them?
646 Mr. Pease: That is immaterial; objected to.
Q Answer the question.
A Because I happened to know Mr. Stadden very well, and Mr. Clancy, friends.
Q Do you go to the office of attorneys of everybody that you happen to know? A No, sir.
Q Then tell us the reason why you went to the office of Atwood & Pease? A I have answered that.
Q I understood you to say simply because you knew Mr. Stadden and Mr. Clancy. A I knew it was their case, and I went to their attorneys to see what was going on.
Q Now tell us what occurred between you and their attorneys. A Went down, asked them about the case, they told me to tell everything I knew in regard to it.
Q Did they ask you what you knew? A No, sir.
Q Didn't ask you a question? A Why, they asked me questions.

Q What did you ask them; what did you say to them? A I wanted to know what the case was.

Q They told you? A Yes.

Q Then what did you say to them after they told you what the case was? A What did I say?

Q Yes, tell us; give us the conversation that occurred between you and them. A Don't think I can.

Mr. O'Connor: That's all.

of William J. Kelly.

647 WILLIAM J. KELLY called as a witness on behalf of complainant, being first duly sworn, testified as follows:

Direct Examination by Mr. O'Connor.

Q What is your name? A Kelly. William J. Kelly.

Q Kelly? A Yes, sir.

Q What is your business, Mr. Kelly? A I address envelopes, send out circulars, letters and the like.

Q Are you a member of any firm? A We do it under the name of Evans & Kelly, that is all.

Q How long have you been engaged in that business? A About three years.

Q Where are you located? A 34 Clark street.

Q In Chicago? A Yes, sir.

Q Do you know Mr. Thorbus, who has just testified? A Yes, sir.

Q You have business relations with him— A Yes, sir.

Q —haven't you? A Yes.

Q Did he ever employ you to do any work on sheets of the Lumbermen's Credit Association?

Mr. Pease: We object to that for the reason that it is leading; not shown that he did any work upon sheets for the Lumbermen's Credit Association, or that he has any knowledge.

648 A I don't know whether he did or not.

Q Did you ever do any work on sheets—printed sheets of the Lumbermen's Credit Association? A I can't answer that because I don't know.

Q Look at that paper; did you print that slip (handing witness paper)? A What is the question?

Q Did you print that slip? A No, sir.

Q What? A No, sir.

Q Did you ever see a slip like that?
Mr. Pease: Objected to as immaterial.
Q What? A A slip like this, in this form?
Q Yes. A Perhaps, yes.
Q Where? A Several places.
Q Where? A Any particular place?
Q Yes? A I couldn't say any particular place.
Q Did you ever see a slip like that in your place? A No, I don't know as I did, just like that.
Q Did you ever see that sheet? A This particular sheet? —no.
Q Did you ever see a sheet like it?
Mr. Pease: Objected to as immaterial.
A No, I don't believe so.
Q Did you ever do any work of that kind for the Lumbermen's Credit Association? A I never did any work for the Lumbermen's Credit Association.
649 Q Did you ever do any work of that kind for Thorbus?
Mr. Pease: Objected to as immaterial.
A Well, I never saw a sheet in that shape, Mr. Thorbus never gave me a sheet in that shape, I couldn't testify that.
Mr. O'Connor: The first paper shown to the witness and the paper that was shown to the witness Thorbus, is marked "For identification, Exhibit 1, October 17, 1902." The last sheet shown to the witness is marked "For identification, Exhibit 2, October 17, 1902."
Q You say that the papers handed to you by Thorbus were not in this condition? A No, sir.
Q In what condition were they when he handed them to you? A Why, they were cut into columns, I understand it, single columns, in the middle of a blank piece of paper; blank page.
Q Leaving a margin on each side of the page? A That is right.
Q It was a printed page pasted on a larger sheet of paper, was it? A Yes, sir.
Q What was the printed page?
Mr. Pease: Objected to.
A What was it?
Q Yes. A I couldn't specify any particular page.
Q I don't ask you to remember what was on it, but tell us the character of it; was it a list of names? A Yes, sir.
650 Q And towns? A And towns.
Q And states? A States.

of Will-Kelly.

Q What? A States, yes, I believe.

Q What was opposite the names? A Why, a system of ratings, I believe.

Q Who handed those papers to you? A Mr. Thorbus.

Q How many were there, what quantity of them? A Well, there is several states bound in each separate column, I don't remember how many.

Q What did you do with them after they were handed to you? A Looked them up, made comparisons.

Q You made comparison with what? A With the Dun book.

Q R. G. Dun & Company's book? A Yes.

Q Where did you get that book? A Mr. Thorbus had it.

Q In what condition was it? A O, he had it cut up for convenience into sections of states and so on.

Q After he handed these pages of the Lumbermen's Credit Association book and R. G. Dun & Company's book to you what did you do with them?

Mr. Pease: Personally.

A Why, as I told you, we made comparisons with the ratings as I understand it.

Q Did you do the work yourself? A Some of it, yes.

Q On what states did you work? A O, I don't re-
651 member now.

Q How many states? A I couldn't say that either.

Q Well, tell us now just what you did, yourself, describe the process of comparison. A Is it necessary for me to answer this?

Q Yes, sir.

Mr. Pease: Not if it interferes with your personal business and private interests.

Q I insist upon an answer. A Why, there was comparison made as to ratings, far as I know, I don't know about that; we put the ratings in, that is what I do know.

Q What ratings did you put in? A The ratings of R. G. Dun & Company.

Q You transferred from R. G. Dun & Company's book the ratings in that book to these slips? A Yes.

Q Opposite the names on the slips were the Lumbermen's Credit Association ratings, were there?

Mr. Pease: Object to the question as leading.

Q Where did you put the ratings, R. G. Dun & Company's ratings? A Opposite the name.

Q Opposite each name you put the rating given in R. G. Dun & Company's book to that name, did you?

Mr. Pease: Object to the question as leading.

Q Did you?

652 Mr. Pease: I think you ought not to lead the witness, Mr. O'Connor.

A Yes sir.

Q Did you transfer ratings from any other book? A I refuse to answer that question.

Q Have you been instructed to refuse to answer that question? A No, sir.

Q Has anybody advised you to refuse to answer that question? A No, that comes natural to anybody to refuse that question; anybody would know enough to do that.

Q Did you find any names in R. G. Dun & Company's book not contained on the pages of the Lumbermen's Credit Association's book? A Why, there is no comparison between R. G. Dun's book and the Lumbermen's Credit book.

Q What? A There is no comparison between the two books.

Q In what respect is there no comparison? A They don't cover the same lines of business.

Q What do you mean when you say they don't cover the same lines? A Why, as I understand, the book we used covered the lumber trade.

Q By The book you used, you refer to the Lumbermen's Credit Association book, do you? A Well, I don't know.

Q I want to know to what book you refer when you
653 say "the book we used"? A I don't know what book we used.

Mr. Pease: The one Thorbus gave you.

A The one Thorbus gave me, all I know.

Q That book covered the lumbermen's trade only. Did R. G. Dun & Company's book cover the lumbermen's trade? A Covers all lines as I understand.

Q It includes the lumber trade, doesn't it? A Yes, sir.

Q Did you make a comparison of the Lumbermen's Credit Association book with R. G. Dun & Company's lumber trade?

Mr. Pease: I object to the form of the question.

A I can't answer that question.

Q With what part of R. G. Dun & Company's book did you make comparison between the pages, printed pages handed to you by Thorbus and R. G. Dun & Company's book? A With what part of R. G. Dun & Company's?

n of Will- Kelly.

Q Yes. A R. G. Dun & Company's book goes alphabetically, regardless of trades.

Q That isn't answering my question.

Mr. O'Connor: Repeat the question.

Question read.

A I don't understand the question yet, unless you refer to states, certain states.

Q Did you compare the state of Alabama, for instance, in the pages handed to you, with the state of Alabama 654 in R. G. Dun & Company's book? A I can't remember that.

Q Tell us how you made the comparison between the two books to which you have referred? A Why, simply put down the ratings in R. G. Dun & Company's book.

Q Where did you get the ratings in R. G. Dun & Company's book? A From the same name in the same book.

Q Did you find any names in R. G. Dun's book that were not in the printed pages handed to you? A Yes, sir.

Q What did you do with those names? A Wrote them in on the margin.

Q On the margin of what? A Of this book that we used.

Q New names in the lumber trade or connected with the lumber trade, were they?

Mr. Pease: Object to the question as leading.

Q In what business were the new names engaged? A O, various lines.

Q Weren't they engaged in the lumber trade or in business connected with the lumber trade?

Mr. Atwood: Object to the question as leading.

A Want me to answer that question?

Q Certainly. A Why, I should judge yes, they were kindred trades, kindred to the lumber trade.

Q When you transferred the new names did you trans- 655 fer any ratings with them? A Yes, sir.

Q What ratings? A Same ratings. R. G. Dun's ratings.

Q How did you arrange the ratings transferred to the printed pages from R. G. Dun & Company's book? A Why, immediately after the name.

Q On the right hand margin of the printed sheet?

Mr. Pease: Object to the question as leading.

Q Was it? A Well, I can't remember.

Q What is it? A I can't remember whether it is the right hand or not.

Q You can only remember that the new ratings were put after each name? A Yes, sir.

Q You say that you did only a part of this work yourself? A Yes, sir.

Q Who did the rest of it? A O, I had about fifteen men on it, I believe.

Q Who were those men?

Mr. Pease: Objected to as immaterial.

Q What were their names?

Mr. Pease: Same objection.

A I couldn't name them now, myself.

Q Are any of them now in your employ?

Mr. Pease: Objected to as immaterial.

A I can't say as they are. I know people that were
656 working at that time, but I don't remember whether they worked on that work in question or not.

Q When did you do the last work of that kind for Thorbus? A Why, last spring some time, seems to me it was in March.

Q Didn't you do some work after March, some work of that kind after March? A Not that I remember of.

Q In what part of March did you do this work? A Why, the latter part, I believe.

Q How often did you do work of that kind for Mr. Thorbus? A Twice that I remember of.

Q When did you do it the first time? A Some time about a year ago, I don't remember the date.

Q When did you do it the last time? A Last spring, this past spring, some time in March.

Q 1902? A 1902.

Q What was the character of the first work that you did about a year ago? A Why, it was the same as the last if I remember rightly.

Q You transferred ratings from R. G. Dun & Company's book in the same way, to the printed slips, in the same way— A Yes, sir.

Q —as you have described. You transferred new names with ratings attached to them from Dun & Company's book to the printed slips, in the same way, did you?

Mr. Pease: Object to the question as leading.

657 Q Well, Mr. Witness, tell us what work you did a year ago? A That is too long ago, I can't remember it.

Q Who handed the printed slips to you at that time? A Mr. Thorbus.

Q They were the same kind of printed slips, were they? A The same kind as we had in the spring, yes.

Q The same kind you had last spring? A Yes.

Q That is, each page was a list of names, was it? A Yes.

Mr. Pease: I object to these questions as leading.

Q Were there any states on the printed pages?

Mr. Pease: Same objection.

Q Were there states on the printed pages?

Mr. Pease: Object to the question as leading. Witness state what was on the sheets if he knows.

A You mean names of states?

Q Yes. A O, I believe the name is on top of each page, the name of each state.

Q Were there names of towns on the printed slips?

Mr. Pease: Same objection.

A Names of towns?

Q Yes. A Yes.

Q Were there names of persons on the printed slips?

Mr. Pease: Same objection.

A Yes, there was.

658 Q Now what did you do with those printed sheets that Thorbus handed you about a year ago?

Mr. Pease: Object to that for the reason that you have been all over it.

A Why, it is the same as in the spring, as I understand, as far as my memory serves me, I can't remember it.

Q After you transferred the ratings and new names from R. G. Dun & Company's books to the printed pages as you have described, what did you do with them? A With the work when it was completed?

Q Yes. A I turned it over to Mr. Thorbus.

Q Did you do that both a year ago and last spring? A Yes, sir.

Q Did you do any of the work a year ago? A Yes, sir.

Q How much of it did you do at that time? A O, very little, perhaps three or four days.

Q You remember what states you worked on? A No, sir.

Q Who did the rest of the work at that time? A Our men employed.

Q How many men did you have— A I can't—

Q —working on it at that time? A I don't remember.

Q Can you give us any idea of the number? A Well, somewhere between ten and twenty.

Q How long were they at work on it? A I can't remember that. Deposition

Q Can you give us any idea of the length of time?
659 A Well, there were two weeks.

Q Do you mean that you recollect that they were at work on it just two weeks?

Mr. Pease: I object to the question as leading.

A Not just two weeks. I say two weeks, perhaps more.

Q In what part of the fall was the work done a year ago?

Mr. Pease: Objected to as having been gone over.

A I don't remember.

Q Are you acquainted with Mr. Clancy? A I have met Mr. Clancy.

Q Where? A In his office.

Q Are you acquainted with Mr. Stadden? A I have seen the gentleman.

Q Where? A In his office.

Q How did you come to go to their offices?

Mr. Pease: Objected to as immaterial; don't make any difference.

A Is it necessary to answer that question?

Q Yes.

Mr. Pease: Not if it relates to your personal business it isn't necessary.

Q I insist upon the witness answering the question. A Well, Mr. Thorbus suggested I go there.

Q To see them about what? A Why, I was asked to go over there to see after this—something was done about a
660 case coming up, something—I was over there, that is all.

Q About this case? A Not this case; I don't know whether it was this case or a previous case.

Q When? A I don't remember the date, some time ago.

Q Did you ever go to their office while you were doing—A No, sir.

Q —the work on the printed slips? A No, sir.

Q Did you ever talk with either of them during that time? A No, sir.

Q Did you ever talk with either of them or any one connected with the Lumbermen's Credit Association while you were engaged in that work? A No, sir.

Q All the work you did was done through Thorbus? A Mr. Thorbus.

Q Are you acquainted with Mr. Pease? A Personally acquainted with him?

of Will-
elly.

Q Yes? A I have seen him.

Q Where? A In his own office, I believe.

Q When? A Some time ago, about four months ago, three or four.

Q Acquainted with Mr. Atwood? A No, sir.

Q Did you ever talk with either Mr. Atwood or Mr. Pease about this case? A Why, I believe Mr. Pease has spoken to me about it.

Q How lately? A Must be four or five months ago, I
661 don't remember the date.

Q Haven't you talked with either of them about this case within the last five months? A No, sir.

Q Has anybody talked with you about this case within a week? A Has anybody?

Q Yes? A You mean just mention the fact?

Q Has anybody talked with you in any way about this case within a week? A Why, Mr. Thorbus mentioned that there was a man up to subpoena him, and probably to see me, that is all I know about the case.

Q Answer my question. Has anybody talked with you about this case within a week? A No, sir. There is the answer.

Q He is the only person who has mentioned this case to you within a week? A Yes, sir.

Q Are you and Mr. Thorbus connected in business together? A No, sir.

Q You only do work for him? A That is it, yes, sir.

Q Do you know how many states were on the printed slips that were handed to you? A No, sir.

Q Who prints the book of the Lumbermen's Credit Association?

Mr. Pease: Objected to as immaterial.

A I don't know.

662 *Cross-Examination by Mr. Pease.*

Q Mr. Kelly, do you remember when you came to our office whether you signed an affidavit in this case or not? A Yes, I did.

Q Do you remember whether or not that was in January of this year? A I do not remember the exact date.

Q Well, was it—do you remember whether it was about that time? A Well, I believe it was.

Q Was that the only time that you were at our office? A Yes, sir.

Q Was it at or about this time that you first saw Mr. Clancy and Mr. Stadden? A Yes, sir, it was the same day.

Q Had you ever seen either of them before? A No, sir.

Q Or have you seen them since that time? A No.

Q And you never saw Mr. Atwood or myself before that time or since, have you? A No, sir.

Q Let me refresh your recollection. Wasn't the last work which you did of the character which you describe prior to the time when you signed this affidavit in our office? A It was the last work I did, yes.

Q Then you have done no work of this character for Mr. Thorbus since that time, have you? A No.

663 Q The March you refer to was March, 1901, was it not, after refreshing your recollection? A March, 1901, is right.

Q Did you know at the time you were doing this work, the work you have described, who it was for? A You mean being informed by some one in authority who it was for?

Q Yes. A No, sir.

Q Did you use, or were there other agency books used besides R. G. Dun & Company's in connection with this work? A Yes.

Q You do not care to state what other books? A No.

Q Did you make this comparison as to all of the states at either time which you did this work, all of the states and territories? A No, sir.

Q Do you remember about how many or what proportion of the states and territories you did this work on? A I do not remember how many I did.

Re-direct Examination by Mr. O'Connor.

Q You now say that the last work you did on the printed pages was prior to last January, do you? A Yes, sir.

Q You did work of that kind twice, I understand you to say? A Yes, sir.

Q When did you do the first work? A I do not re-
664 member when I did the first work.

Q About what time? A Well, I should judge it was about six months previous to the last time.

Q About what month? A Well, I can not recollect.

d Will-
ully.

Q Can't you give some idea as to the time of the year when you did the work, the first work? A Why, I believe it was in March, 1901.

Q About what time did you do the second work? A I think I stated before it was somewhere about a year ago this time.

Q About October? A Perhaps earlier.

Q You do not remember exactly when? A I do not remember.

Q Would your books show when you did the work? A No, I do not think so, there is nothing in my books to show.

Q Do you keep any books of account? A Yes, sir.

Q Have you an account with Mr. Thorbus? A Yes, sir.

Q Would that account show when you did this work? A All his work is billed in one item and sent to him at the end of every month, all I keep is the totals.

Q Do you keep a day book? A Yes, sir.

Q Do you state the kind of work in that day book? A What sort of work?

Q Yes. A Sometimes where it is—do you mean work passed from Mr. Thorbus to me?

Q Yes. A Sometimes, and sometimes I do not.

Q When you do know what the work is, such as you 665 have done in this case, do you state the nature of the work in your books? A I did not say I knew what this was.

Q Did you state the nature of the work in this case in your books?

Mr. Pease: Objected to as immaterial.

A I believe I had a reference like "Lumber job," I believe I called it.

Q Will you bring those books with you at the next hearing? A I do not know whether I can produce them or not.

Q Why not? A Well, it would be simply an ordinary day book which I do not always keep.

Q Do you keep a ledger? A Yes, sir.

Q Will you bring the ledger showing the kind of work done for Mr. Thorbus during the year 1901, and the day book referring to that work? A I do not know whether I can produce the day book or not for that time.

Q Why not? A Well, I never saw any necessity for keeping accounts that way.

Q Will you produce the day book which you kept during the year 1901? A No, I could not do it.

Q Why not? A I do not think I have it.

Q What has become of it? A Possibly destroyed.

Q Do you know whether it has been destroyed or not? A I can not say positively until I look the matter up.

666 Q Have you the cash book which you kept during that year? A I do not think I kept a cash book.

Q Did you keep any other books during 1901 except a ledger and day book? A That is all.

Q Will you make a search for your ledger and day book and produce them at the next hearing? A I think that would interfere with certain business matters to produce them.

Q Will you produce them or not? A I do not know whether I can produce the day book or not, if possible, yes.

Q For whom did you think the work was being done?

Mr. Pease: I object. You are calling for the conclusion of the witness which is immaterial and incompetent.

Q I do not remember doing any thinking on the subject.

Q You think that you did not do all of the states and territories each time? A No, sir.

Q How many were done the first time? A I do not remember.

Q How many were done the second time? A I can not answer that.

Q Are you sure that all of them were not done at each time? A No, at least I did not do them.

Q What? A We did not do them.

Q Can you tell us any of the states that were done either time? A Any particular state?

Q Yes. A No, I can not.

667 Q Were the states and territories that you did the second time the same states and territories that you did the first time? A No, they were different.

Q All the states and territories that you did the second time were different from the states and territories which you did the first time, were they? A To the best of my recollection, yes.

Mr. Pease: Mr. Kelly, did you have more than one order or job of work going on in your office for Thorbus at the same time?

A Yes.

Q Will you have that book here next Monday at 2 o'clock;

of Will-
lly.

your books of account covering the year 1901? A I do not know whether I can produce them or not.

Q When did you last see them? A I started all new on the first of May.

Q Of what year? A This year.

Q Do you remember destroying the old books? A I threw them into the vault, they may be there and they may be burned up.

Q Will you look for them and come next Monday afternoon whether you find them or not, and if you find them bring them with you? A Yes, sir.

Examination adjourned to Wednesday, October 22, 1902, at 2 o'clock P. M.

668 October 22, 1902
Two o'clock P. M.

Met pursuant to adjournment;
Present, as before.

FERDINAND VOLKERT, a witness called on behalf of complainant, being first duly sworn, testified as follows:

Direct Examination by Mr O'Connor.

Q What is your name? A Volkert.

Q What is your first name? A Ferdinand.

Q In what business are you engaged? A Blank book manufacturing, book binding.

Q How long have you been engaged in that business? A Little over four years.

Q Where is your place of business located? A 85 Fifth avenue.

Q How long have you been at that location? A Been there about that time, little over four years.

Q Are you acquainted with William Clancey, this gentleman? A No, not personally.

Q Have you seen him before? A I may have, I think I may have in his office, I think I was there some time.

669 Q You met him in business, or how? A Only that I believe that I was in his office once about some little matter.

Q Matter of business? A Yes, something about some binding.

Q Are you acquainted with Burton Stadden? A No.

Q That gentleman (indicating)? A No.

Q Did you ever see him before,—this gentleman? (indicating) A May have, don't remember.

Q Do you know the Lumbermen's Credit Association? A I know them in this way, that I have done a little work for them off and on.

Q What was the nature of the work that you did for them? A It was binding books, taking old books apart mostly and inter-leaving them with ruled paper and rebinding them.

Q What were those books? A Why I think they were such as—one thing was Bradstreet's reports I believe, I am not positive about that, I can't remember those things.

Q Do you remember doing any work of that kind in R. G. Dun & Company reference books?

Mr. Pease: Object to the question as leading.

Question read by the reporter.

A I do not remember positively, we may have done that, we may have done work on them and may not, I couldn't say.

Q When did you begin to do that work for the Lumbermen's Credit Association? A We have done work of that
670 kind for them the first year I believe we were in business, something like four years ago.

Q When did you do the last work of that kind?

Mr. Pease: What kind?

Mr. O'Connor: Taking books apart and rebinding them in sections.

A I can't say exactly but I think sometime last spring I believe, I couldn't tell, those little things come and go, I don't notice.

Q Did you do any work of that kind for them during the year 1901? A I believe that we did.

Q Do you remember what books you did during that year? A No.

Q Do I understand you to say positively that Bradstreet's is the only book on which you ever did work of that kind for the Lumbermen's Credit Association?

Mr. Pease: I object to the question as leading, as Mr. O'Connor's understanding is not a matter that the witness is concerned in; his testimony shows what he said.

Question read by the reporter.

A No, I don't say that.

Q Upon what other books did you do work of that kind,

according to your best recollection? A That is something I can't tell, I am not even positive that it was Bradstreets but I am under the impression that it was, they may possibly
671 have been Dun's or some—but they were books of that nature.

Q They were reference books? A They were reference books.

Q Describe particularly the character of the work you did upon those books? A Well they were some books we took apart and put them up in sections, I believe certain States were put up in manilla.

Q Do I understand that you took the books apart in sections by States? A Yes, something like that, and each State was put in a separate cover; then we had some books which we took apart and inter-leaved them with ruled paper and rebound them I believe practically in the same position as they were before except they had the paper in between.

Q How large was the book when it was brought to you? A Well, they were different sizes; we had some about this size (indicating).

Q Describe in inches. A I should say 18 inches by 12, probably a little bit larger, and some 9 by 10, something about like that.

Q How thick? A The larger ones I should say were four inches thick, and the smaller ones after they were interleaved were about two inches thick.

Q After you took those books apart and bound them in sections in manilla paper, what did you do with the sections? A Why, they were covered up with manilla and I believe we delivered them that way to the Lumbermen's Credit Association.

672 Q Where is its office located? A Corner of Madison and LaSalle, I forget the number.

Q In what building,—the Tacoma? A Tacoma Building, yes sir.

Q To whom did you deliver them? A That I couldn't say, they were delivered by our delivery man to their office.

Q After those sections were delivered to the Lumberman's Credit Association, did you ever have anything more to do with them? A I couldn't say positively, it seems to me we had them come back and put back in the old cover; now we have done such work, I can't say but it seems to me that it might have been.

Q But in some cases you did restore the sections to the original binding?

Question objected to.

A I am not sure we did that for the Lumbermen's Credit Association, it was work similar to other work where we do it that way.

Q Who gave you the order to do that work? A That is something I couldn't say; these orders come in by an errand boy as a rule, they give them verbally, and may have had some in writing.

Q With whom, connected with the Lumbermen's Credit Association, did you talk about that work? A I don't know that we ever talk with anybody outside of these boys that come in.

Q Did you ever talk with Mr. Clancey about that work?

673 A I don't think I did.

Q Never talked with him on any occasion about this work? A Not that I remember.

Q Did anyone connected with your office talk with anybody connected with the Lumbermen's Credit Association about that work? A I think not.

Q How did you know what work was to be done? A The books were brought in by a boy and explained what was wanted, and we filled that order and that settled it.

Q Who paid your bill for that work? A There was checks sent in for it.

Q By whom were the checks signed? A I don't know.

Q To whom did you send the bills for that work? A Lumbermen's Credit Association.

Q Have you talked with anybody about this case recently? A No sir.

Q Do you know Mr. Pease or Mr. Atwood? A Do not.

Q Ever talk with them about the case? A Not that I know of.

Q Talk with Mr Clancey about this case? A Never talked with anybody about the case,—the fact of the matter is, if I may say, I didn't know what I was coming down here at all for.

Q If one of the books which you rebound were shown to you do you think that you could recognize it as work done by you?

Question objected to as calling for a conclusion or

674 opinion of the witness.

Q In other words, could you recognize your work if you saw it?

Same objection.

A Why I don't think I could recognize my work, work of that nature.

Q How often did you do work of that kind for the Lumbermen's Credit Association? A That is very hard to say, but it seems to me it came in like once or twice a year.

Q For how many years? A I believe it was ever since we were in business; sometimes there wasn't any work for a long time and I thought we didn't do it any more, then finally we got another little batch, I don't know whether we been doing it all the time,—I don't remember those things.

Q When was it that you didn't get any for a long time? A Why it seems to me about a year ago, I thought—

Q For how long a time did you get no work of this kind from the Lumbermen's Credit Association? A I can't tell, I can't say about that, I don't know about those things,—they're small jobs that come and go, come in and I don't know anything about it hardly.

Q Have you any account with the Lumbermen's Credit Association on your books? A Yes.

Q Would that account show the character of the work that you have done for the Lumbermen's Credit Association? A Yes.

675 Q What are the names of the books in which that account appears? A Why I don't think it would give any names, it would merely describe the work—was the question as to the name of our books?

Q Yes; what are the names of your books in which the account is carried of the charges of the Lumbermen's Credit Association? A There is the ledger, the order book and the job ticket which we can refer to.

Q Will you bring here Friday afternoon at two o'clock your books of account showing all the work done by you for the Lumbermen's Credit Association since July first, 1900?

Mr. Pease: I object to the question: the witness is not obliged to bring his books here unless he pleases; they have no right to go into your private matters.

Question read by the reporter.

A Am I to give an answer to that?

Q Yes. A That would be a very difficult thing for me to do, for one thing.

Q Why? A Because I'd have to get my old books out and get those things together as I have changed from the old book-keeping to the loose-sheet system.

Q When did you make the change? A About three years, little over two years ago.

Q Then all this would appear in your loose sheet system? A This is since the last two years,—yes.

Q Well, don't you keep all affairs relating to every 676 customer together? A In the loose-sheet?

Q Yes. A Since '91?

Q 1900. A Yes, I guess I would have that all in the loose-sheet book, that is right.

Q Will you bring those books here Friday afternoon at two o'clock.

Question objected to as incompetent, irrelevant and immaterial.

A I will if I have to.

Q I ask you whether you will or not?

Mr. Pease: He's answered the question.

A I prefer not to, they're cumbersome.

Q In insist Mr. Witness, it is your duty, I want to know whether you will or not? A If there are other ways to get it I believe I'd rather not, rather not bring them—I don't want to go to any unnecessary trouble.

Q Do those accounts describe the work that was done for the Lumbermen's Credit Association?

Mr. Pease: I object to that for the reason the accounts are the best evidence.

Q Answer the question. A Well, taking it altogether it surely will; if I take the ledger, order book and job tickets, that is all the work we done, I can refer to the original job ticket, that describes all.

Q What did you call them,—ledger? A Yes.

Q What other book? A Order book.

677 Q What else? A Job ticket.

Q Anything else? A No.

Q Have you any other books or papers of any kind relating to the work for the Lumbermen's Credit Association? A I don't think of anything else, excepting duplicate bills, something like that.

Cross-Examination by Mr. Pease.

Q Mr. Volkert you did other work for the Lumbermen's Credit Association than the taking apart and binding up in sections of these reference books, did you not? A Why I think so, we have done little odd jobs at different times, I can't recall just what they were.

Q You did other work? A We have done other work besides these reference books which we put in sections, and put them together again.

Q Now wasn't the last work, wasn't the last reference books which you took apart and bound up in sections for the Lumbermen's Credit Association, in 1900? A Well, I couldn't say; I'd have to look that up on my books, I don't remember that; I shouldn't wonder if what it would be.

678 Q And the work which you have done for the Lumbermen's Credit Association since 1900, has been of entirely different character, has it not? A That is it—I am not sure on those things; we have done a little work for them but just what nature it is I can't recall, I don't know just, I done some though.

Q Well, do you remember that you did any work on the reference books for them, that is taking them apart and binding them up in sections, since 1900? A I do not remember distinctly having done any since that time.

Mr. Pease: That's all.

Mr. O'Connor: Now Mr. Volkert I'd like to have you here Friday afternoon with those books.

Mr. Pease: Tell him to subpoena you if he wants you.

The Witness: It seems to me like I was entitled to something if I bring them down.

Mr. O'Connor: You'll have $1.10—you'll have $1.60 if you come here.

679 FRANCES H. MOORE, a witness called on behalf of complainant, being first duly sworn, testified as follows:

Direct Examination by Mr. O'Connor.

Q What is your name? A Frances H. Moore.

Q What is your occupation Miss Moore? A Clerk of the Lumbermen's Credit Association.

Q What are your duties as such clerk? A Compiling the sheets, the bi-weekly sheets.

Q How long have you been connected with the Lumbermen's Credit Association? A Twenty years.

Q The Lumbermen's Credit Association I believe was incorporated in '93; you were connected with Mr Clancey before— A Before that.

Q —before the Lumbermen's Credit Association was incorporated? A Yes.

Q You were subpoenaed to produce certain books, books known or called black bound books and red bound books used by the Lumbermen's Credit Association in the preparation of the July 1901 and January 1902 editions of its reference books; did you bring those books with you? A I did not.

Q Why not? A I can't produce them.

Q Why not? A I have no access to them.

Q Where are they? A I don't know.

Q Did you look for them? A I did not.

680 Q Did you ask anybody about them? A No.

Q Did you speak to anybody about them at all? A No.

Q Where are they usually kept? A I don't know.

Q When did you last see them?

Mr. Pease: I object to the question; it is double.

Q Did you ever see those books? A Yes.

Q When did you last see them

Mr. Pease: Which books?

Mr. O'Connor: The black bound books and red bound books used in the preparation of the editions of July 1901 and January 1902.

Q Answer the question.

Question read by the reporter.

A Not since the issue of the books.

Q Since the issue of what books? A Each book that was—each one of the books, the different issues.

Q What editions and what books? A You are inquiring about the 1901?

Q I said July 1901 and January 1902. A I don't know.

Q When did you last see the red bound books of January 1902 edition? A I don't know.

Q What is your best recollection? A Not since January 1902.

Q Did you see it in January 1902? A I think not.

Q Did you see it in December 1901? A I may have, I
681 don't know.

Q When did you last see it according to your best recollection? A I have told you I don't know when I saw it last.

Q Can't you give us any idea? A No.

Q As to the last time you saw it? A No I can't.

Q When did you first see it? A Probably in October.

Q Of what year? A 1901.

Q Describe that book?

Mr. Pease: What book.

Mr. O'Connor: The red bound book of the January 1902 edition.

A That is our Lumbermen's Credit Association reference book cut up and pasted on ruled paper and bound.

Q Bound together? A Bound, each State bound separately.

Q Each state bound together, by States? A Yes.

Q You say that it consisted of pages of the Lumbermen's Credit Association Reference book? A Yes.

Q Pasted on larger sheets? A Yes.

Q From what edition were those pages taken? A July 1901.

Q The last prior edition? A Yes.

Q Of the reference book of the Lumbermen's Credit Association. (No answer)

Q What else was in that red bound book besides the pages of the Lumbermen's Credit Association reference book?
682 A The additional names and ratings.

Q What were the additional names and ratings? A Taken from Bradstreets' and Dun's books.

Q When? A Well, I don't know when.

Q How were those names and ratings written on the red bound book,—in ink or in lead pencil? A Lead pencil.

Q How were they arranged on the red bound book, how were the ratings arranged on the red bound book, the ratings taken from R. G. Dun & Company's book, and ratings taken from Bradstreets? A There was no regular order.

Q How could you distinguish one from the other? A Why, only by knowing the ratings.

Q The ratings differed in character? A In character.

Q When did you last see the red bound book of the July 1901 edition? A Not after July first.

Q When did you see it?
Mr. Pease: What year?
A 1901.
Q When did you first see it? A Probably in April.
Mr. Pease: What year?
A 1901.
Q Why do you say "probably in April"? A It might have been later or earlier, I am not certain.
683 Q Why do you say "probably in April"? A Because I don't remember exactly, I never kept a record.
Q Describe that book. A It was just a copy of the January edition arranged in the same way.
Q It was a copy of the January 1901 edition of the Lumbermen's Credit Association reference book? A Yes.
Q With what ratings added to it? A Bradstreets' and Dun's.
Q You spoke of new names; where were those names obtained from? A From the same sources.
Q Bradstreet and Dun? A Yes.
Q How were the ratings of R. G. Dun & Company and Bradstreets arranged with reference to the names on the pages? A They were not arranged in any particular order.
Q Well, each rating followed each name, didn't it? A O yes.
Q After each name there was first the rating of the Lumbermen's Credit Association, then other ratings taken from R. G. Dun & Company's book and Bradstreets', were there? A I don't know whether that was the order.
Q What do you think was the order?
Mr. Pease: I object; what was the order.
Q What is your recollection as to the order of the ratings as they appeared on the red bound book? A The order wasn't the same in all cases.
Q What is your best recollection as to the order?
Mr. Pease: She said they wasn't the same.
684 Q What do you mean when you say they wasn't the same?
Mr. Pease: I object to the question as calling for the opinion of the witness; the language is plain.
Q Answer the question. A I don't understand the question.
Mr. O'Connor: (to reporter) Read the question.
Question read by the reporter.
A They didn't follow the same order in all cases.

Q Can't you describe more definitely what you mean? A I mean in some cases Dun's ratings may have been first and Bradstreets' second; in others Bradstreets' first and Dun's second.

Q You say you distinguished Dun & Company's rating from Bradstreets' rating because they were different in character; describe the character of the ratings or the systems used by Dun & Company and Bradstreets. A Bradstreets uses letters entirely in their ratings; Dun uses letters and figures.

Q When did you last see the red bound book of the January 1901? A I think you asked me that before.

Q No, I asked you about the January 1902 and July 1901; now I ask you about the January 1901. A January 1901? Probably January 1901.

Q When did you first see that book? A October 1900.

Q What? A October 1900 I think.

Q Describe that book? A Made up in the same way, 685 from the leaves of the July 1900 book.

Q With the ratings added? A With the same ratings.

Q Dun & Company and Bradstreets' A Dun and Bradstreet

Q Did you have anything to do with the making of the red bound book of the January 1901 edition? A No.

Q Did you ever help in making up the red bound book of the—

Mr. Pease: I object and advise the witness she need not answer the question as it is not—(to the reporter) Read that question to me.

Question read by the reporter.

Q (continuing)—of the Lumberemn's Credit Association reference books?

Mr. Pease: You need not answer the question unless it refers to the January 1901, July 1901 or January 1902 books; those are the only books, reference books which are in issue in this case.

Last question read by the reporter.

A Am I supposed to answer that?

Mr. Pease: Wait a minute. I advise the witness not to answer the question unless it refers to one of the three last books mentioned.

Last question read again to the witness.

A I decline to answer.

Mr. Pease: I advise the witness not to answer the question for the reason that the books inquired about are not in
686 issue in this case.

Q The red bound books in the cases that you have mentioned were bound together in sections by States, as I understand? A Yes.

Q How many editions of the Lumbermen's Credit Association books are issued in each year? A Two.

Q At what times in the year? A January and July.

Q What States are revised in the January edition? A East and South.

Q Give us the States, if you please, name them. A Alabama, Arkansas, Connecticut, Delaware—

Q Perhaps I can shorten the examination by asking you to name the States with reference to the Mississippi River, can you? A No; I can give you an alphabetical list easier.

Q Can you? Very well; name all the States that were revised in January? A That is, Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Louisiana, Maine, Maryland, Massachusétts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, North Carolina, South Carolina, Vermont, Virginia and West Virginia and the District of Columbia; I think that is all.

Q Did you name Georgia? A Georgia.

Q Did you name Mississippi? A I meant to if I didn't, Mississippi.

Q What States are revised in the July edition? A All
687 the remaining States and Territories.

Q You omitted certain States east of the Mississippi River? A I mean in the July edition.

Q All the remaining States you say are revised in the July edition? A Yes.

Q For how many years have the States been revised in that way? A In what way?

Q The States which you have mentioned as revised in January and the States which you have mentioned as revised in July? A I can't recall now.

Q Has the Lumbermen's Credit Association been revising the States in that way for five years or more? A Yes.

Mr. Pease: You mean according to the division?

Mr. O'Connor: Yes, according to the division which was stated by the witness.

Q Are there any red bound books now in the office of the Lumbermen's Credit Association? A Yes.

Q What year do they cover? A July 1902.

Q Is that the only red bound book now in that office? A The only one I know of.

Q What has become of the other red bound books? A I don't know.

688 *Cross-Examination by Mr. Pease.*

Q Miss Moore just what work is done in the division of these different editions of the reference books of the Lumbermen's Credit Association?

Mr. O'Connor: I object to the question because it is not proper cross examination; we asked nothing about the revision work.

Q What do you mean by the revision? You have been asked about that?

Question objected to because it is not proper cross-examination.

A Why, revise all the States, every city in the State, getting reports and revising the ratings.

Q Well, what do you do, or what is done?

Question objected to because it is not proper cross-examination.

Q Go ahead. A A blank is sent to every town including all the names of the dealers in that town, for a full report.

Q Names of dealers in what? A In lumber, and kindred trades.

Q Is that true of each of the States revised?

Same objection.

A It is true of each of the States revised.

Q What—how is this blank made up?

Same objection.

689 A The town is pasted on the blank, the names are all written in order, alphabetical order in the proper margin.

Q Is this blank known or called a revision blank?

Same objection.

A Revision blank.

Q What do you say is pasted on the blank?

Same objection.

A The town cut from our reference book, the Lumbermen's Credit Association reference book.

Q You mean the slip? A Yes.

Q Containing the name of the town and the dealers? A Names as they appear in our—

Same objection.

Q As they appear in what? A In our previous edition of the reference book.

Q What if anything else is put upon those revision blanks aside from this slip cut from the last previous edition of the reference book?

Same objection.

A All the names and the additional names that have come in since the edition of the book.

Q Where are those additional names taken from? A From our office book.

Q And just describe that office book?

Same objection.

A The office book is a regular book with inter-leaving 690 of ruled paper.

Q Is a regular what book? A One of the regular editions.

Q Of what? A Of the reference book.

Q Of what edition? A Of the last edition.

Q Now how is that book kept—

Same objection.

Q —and what is done with it? A All changes, all new names, everything that comes up in reference to anything in our line, is kept on the margin of the book; all new towns are entered on the margins of the book with the names and everything pertaining to it.

Q All changes or new matters that come up when?

Same objection.

A After the issue of the book, between the issues of the book.

Q And when are these notations and changes made in this office book?

Same objection.

A Made daily.

Q Are you doing that work? A I am doing that work.

Q How long have you been doing that work, how long have you done that work? A Why I should say fifteen years.

Same objection.

Q Now from what sources of information are these changes and new names noted in this office book?

691 Mr. O'Connor: Same objection,—that it is not proper cross-examination.

A From reports, from correspondents, from subscribers, clipping bureaus, trade papers, personal statements, and reference reports.

Q Any other sources?

Same objection.

A I can't recall anything more now.

Q How about the reports from the collection department? A And reports from the collection department.

Q Do you recall any other?

Same objection.

A I don't know.

Q How about the tracer reports?

Same objection.

A Well, we have tracer reports also.

Q How about traveling solicitors?

Same objection.

A We have reports from traveling men.

Q And the law bulletin? A And the law bulletin.

Same objection.

Q What do you refer to by trade papers? A All papers issued in lumber interests.

Q And how many of them is taken by—or received by the Lumbermen's Credit Association?

Question objected to for the same reason.

692 A Probably twenty.

Q Now, about special agency reports?

Same objection.

Q In cities, special agencies in cities? A Yes, we have a number of special agency reports.

Same objection.

Q Now just explain or state the manner in which this information, these different sources of information is handled in the office with reference to this office book,—just what is done with it, Miss Moore?

Question objected to as not proper cross-examination

A The reports are looked over and compared with previous reports and the rating changed or left as it was according to the reports.

Q Well, where is the rating changed?

Same objection.

A On the office book.

Q How about the new names? A All the new names are entered on the margin of the office book in connection with the town.

Q How about special reports received from inquiries sent out from day to day,—do you have those?

Same objection,—not proper cross examination.

A Those reports are used in the same way.

Q About how many of those special reports in reply to inquiries are received daily by the Lumbermen's Credit
693 Association, what will they average in the year?

Question objected to as not proper cross-examination.

A Probably average about fifty daily.

Q Every day. About how many revision blanks is received by the Lumbermen's Credit Association on each revision, Miss Moore?

Question objected to as not proper cross examination

Q Approximately. A Why, probably eight or ten thousand.

Q How many employes are there in the office regularly?

Same objection.

A About twenty-five.

Q And how many during the revision work?

Same objection.

A Well, there are four extra.

Q And what do those four additional ones do?

Same objection.

A They prepare the blanks, the revision blanks and send them out, mail them.

Q And how long are they employed at that work?

Same objection.

A About three months.

Q Twice a year?

Same objection.

A Twice a year.

694 Q Do you know what the postage amounts to per week or day during that time?

Same objection.

Q That is used by the Lumbermen's Credit Association, approximately? A Why, about $150 a week at the busiest time.

Q That is, during revision work?

Same objection.

A During revision work.

Q And this continues for three months?

Same objection.

A Perhaps not quite so much at the end, probably $100 a week.

Q You mean a hundred dollars a week?

Same objection.

A A week.

Q During how much of the latter part of the time?

Same objection.

A Well, about six weeks.

Q Do you know about what percentage of changes is made in each revision?

Same objection.

Q What percentage of changes in ratings is made in each revision?

Same objection.

A Well, most States would be very small.

Q Well, what do you mean?

695 Same objection.

A Probably two per cent or less.

Q Well, is it two per cent or less?

Same objection.

A I beg your pardon,—I don't know the question.

Question read by the reporter.

Same objection.

A Yes.

Q Now Miss Moore, what is done with these revision sheets when they are returned?

Same objection.

Q Or when they come back to the Lumbermen's Credit Association? A They are put in alphabetical order and checked up and turned over to the raters, each State.

Q Checked up with what?

Same objection.

A Why, checked on the book to show that the blank has been returned.

Q And then what besides the revision sheets do the raters have before them?

Same objection.

Q —on each revision of the book? A They have the office book and all the files, card files and previous revisions.

Q Who has charge of the sending out of these revision blanks? A Why, I have charge of them.

696 Q And the sending of them out?

Same objection.

A Yes.

Q And also when they come back?

Same objection.

A When they come back.

Q Just how is this work, the sending out of these revision blanks divided up?

Question objected to as not proper cross examination

A Each State is given to one of the girls, and she makes out all the blanks for that State.

Q And does what with them?

Same objection.

A Addresses the envelopes and sends them out.

Q What if any use is made of these red bound books Miss Moore, if you know, after the publication of the edition of the reference book for which they are—which they refer?

Question objected to as not proper cross examination

A Make no use of them.

Q Now you said the red bound books for the July 1902 edition of the reference book, were in the office? A Yes.

Q What if anything do these last mentioned red bound books contain, aside from the slip cut from the last previous edition of the reference book of the Lumbermen's Credit Assotion?

Question objected to as immaterial.

697 A Contain nothing.

Q That is to say, there are no ratings from any other reference book? A No other ratings.

Q Miss Moore what if any use is made of these red bound books by the raters during this revision work, if you know?

Question objected to as not proper cross examination

A Compare our information with the ratings given them.

Mr. O'Connor: With the ratings given where?

A In the red bound book.

Q Was that all the use that was made of the red bound books in the revision work by the raters in this revision work? A That's all.

Q Miss Moore if the revision blank were not returned with the report the first time in any case, what was done in that case?

Mr. O'Connor: Objected to as not proper cross examination, and because it assumes facts not shown by the evidence, it not appearing that any revision blanks were returned, and because it is leading.

Question read by the reporter.

A The second blank was sent to another correspondent.

Q Now in case this second revision blank was not returned what was done?

Mr. O'Connor: Objected to as not proper cross examination because it does not appear that second blanks were returned in answer, and because the question is leading.

698 A The blank was sent to one of the dealers in the town.

Q That is the revision blank?

Same objection.

A Yes.

Q Now were there some cases in which the first revision blank was not returned?

Question objected to as not proper cross examination

A Yes.

Q Some cases in which the second was not returned?

Same objection.

A Yes.

Q Now in cases where the first blank was not returned by the correspondent, what if anything further was done besides sending out a revision blank to another correspondent?

Mr. O'Connor: Objected to as not proper cross examination, because it assumes a fact not appearing in the evidence, it not appearing that a second blank was sent out, and because it is leading.

Q Well, were these correspondents to whom these first revision blanks were sent, written to in case they didn't return the blank?

Question objected to as not proper cross examination, and leading.

A A postal card was sent to each one.

Q Now how late or up to what time before the publication of the book was this revision work carried?

699 Question objected to as not proper cross examination.

A I don't quite understand.

Q How long was this work, this revision work done before the book was published?

Question objected to as not proper cross examination

A From about the first—about three months before the issue of the book up to the publication.

Q Right up to the time the book went to press? A Right up to the time the book went to press.

Q Miss Moore in your direct examination you stated that each State was bound separately in these red bound books for

each revision; you don't mean by that that all the States were bound separately for each revision, do you? A The States that we were revising.

Q Only the States that you revised? A Yes.

Re-direct Examination by Mr. O'Connor.

Q How many traveling men are in the employ of the Lumbermen's Credit Association? A Three.

Q Who are they? A Mr. Wright.

Q What Wright? A F. W. Wright.

Q Fred W. Wright, is it? A Fred W. Wright I believe.

Q And two other men? A J. E. McFall.

Q And the third man?

700 Mr. Pease: Mr. Thompson?

A W. C. Thompson.

Q How long have they been traveling for the Lumbermen's Credit Association? A I don't know.

Q Mr Wright went into the employ of the Lumbermen's Credit Association as a traveling man recently, didn't he? A I don't know the date.

Q About how long has he been traveling for the Lumbermen's Credit Association? A Six months that I know of, possibly before.

Q He was then in the employ of the Foster Mercantile Agency for a while, wasn't he?

Question objected to.

Q Wasn't he? A Yes.

Q Before he went into the employ of the Lumbermen's Credit Association as a traveling man, how many traveling men were in the service of that concern? A Two.

Q How long were these two men traveling for that concern? A I don't know.

Q About how long? Can you give us some idea? A No, I don't know when they began.

Q Have they been traveling for it for years? A Yes.

Q Both of them? A Both of them.

Q Do you know how long? A No.

Q Then before Wright began to travel for the Lumbermen's Credit Association, that concern had only two traveling men in its service? A So far as I know.

701 Q Have you ever actually counted the number of

names in the reference books of the Lumbermen's Credit Association? A No.

Q Have you ever actually counted the number of names of which the ratings were revised at any revision? A No.

Q Then you don't know by actual count what proportion the number of ratings revised bear to the total number of ratings in the book do you? A Not exactly, no.

Q When you said that the raters have before them when they are making or fixing the ratings, the office files, did you include as a part of the office files the red bound book containing the ratings of R. G. Dun and Bradstreet? A No.

Q Didn't they have there any of these red bound books before them? A They had.

Q When they were fixing the ratings? A Yes.

Q Weren't the red bound books preserved in one of the vaults in your office after the editions to which they related were issued? A I don't know.

Q Didn't you ever have occasion to go into that vault where they were kept?

Question objected to.

Q Did you ever have any occasion to look at any of the 702 red bound books after the edition to which they related had been issued? A No.

Re-cross Examination by Mr. Pease.

Q Were there other traveling men employed by the Lumbermen's Credit Association at any time? A Yes.

Q Remember who? Remember their names? A I do not; I was trying to remember, but I cannot remember.

Q Was Mr Kaufman? A Mr Kaufman was one.

Q Mr Owens? A Yes.

Q And Mr Hicks? A Yes.

Q Your statement as to the percentage of changes in the ratings in each revision of the books is based upon your general knowledge of the work, was it not?

Question objected to as leading.

A Yes.

Mr Pease: That's all.

Mr O'Connor: That's all.

Whereupon an adjournment was taken to Friday October 24, 1902, at 2 o'clock P. M.

703 October 24, 1902.
2 o'clock P. M.

Met pursuant to adjournment.
Present, as before.

WILLIAM J. KELLY recalled for further direct examination by Mr. O'Connor: Deposition of William J.

Q Mr. Kelly, you testified in this case a few days ago, didn't you? A Yes.

Q Since you testified you have been subpoenaed to produce all books of account, bills, statements and other papers in your possession or under your control relating to any account with or any work done for the Lumbermen's Credit Association or William Clancy or Burton Stadden, since January first, 1901, were you not? A Yes.

Q Have you produced— A I have nothing.

Q —any of those books or papers? A I have nothing to show since the first of May, this year, that is as far back as my accounts run.

Q Did you make diligent search for books of account and papers prior to that date? A Yes; first of May I moved down stairs and I guess all books were destroyed, far as I can find out.

Q Do you remember destroying them? A Well, I left 704 them up there and the janitor threw them out.

Q Do you remember destroying them? A Well, I left them up there and the janitor threw them out, that is about what happened to them.

Q All your books and papers up to the day of removal? A Yes, sir.

Q On that day you left—when you moved, you left all your books and papers up to that date behind you, did you? A All books of original entry, yes.

Q What do you mean by "books of original entry"? A Well, all books but the ledger; ledger runs back to probably about a month before that, about the first of April.

Q To April, 1902? A 1902.

Q You took that book with you, did you? A Yes.

Q Where is that book? A As I understood it, it was from January first, this is April, 1902.

Q You mean the ledger to which you refer runs back only to April, 1902? A Yes, sir.

ion of Will- . Kelly.

Q That is, begins at that date? A Yes.

Q Well, this subpoena calls for all books of account since January, 1901; why didn't you bring that ledger with you? A I understood it was previous to January, 1902, that is what I understood.

Q Your subpoena distinctly states that you are to bring with you all books of account and papers relating to the
705 accounts mentioned since January first, 1901. A Well, pertaining to this case, as I understand it.

Q After you moved you had a new set of books, did you? A Yes.

Q All your old books and accounts you left behind you and they were destroyed? A They were destroyed, yes.

Q Up to the date you moved? A Yes.

Q Did you direct the janitor to destroy them? A I threw everything out on the floor, and taken for granted it would be destroyed or wouldn't have left them.

Q What is that? A That is taken for granted they were to be destroyed, they were thrown among a lot of other stuff.

Q Have you inquired of the janitor what he did with those books and papers? A No special inquiry.

Q What books did you have at the time you moved? A At the time I moved? Why, I had order book and ledger probably run back a couple of weeks at that time, order book don't last more than a month at a time.

Q How many order books did you have at that time? A I only use one at a time.

Q How many did you have—how many old ones did you have at that time? A O, probably five or six.

Q How far did they run back? A Well, I couldn't say, probably over a year or so there.

706 Q When did you say you moved? A First of May, this year, 1902.

Cross-Examination by Mr. Pease.

Q Your business is practically a cash business, isn't it? A Yes, practically.

Mr. Pease: That is all.

Re-direct Examination by Mr. O'Connor.

Q Do you carry any accounts at all? A Yes, once in a while.

Q For whom do you do work on credit?

Mr. Pease: I object to that as immaterial, incompetent irrelevant.

Q Answer the question. A I can't carry such things as that in my head.

Q What? A I couldn't tell you that without looking the matter up.

Q Were you doing work on credit at the time you moved last May? A For whom?

Q What? A Possibly four or five different people. By credit do you mean thirty day account or longer?

Q Both.

Mr. Atwood: Thirty days is cash, I understand.

A All accounts supposed to be paid in thirty days as I 707 understand it.

Q Did you do the most of your business in that way, on thirty days time? A Yes.

Q That is, the parties were to pay you within thirty days after the work was done and delivered? A Generally on the first of the month.

Q First of what month? A Of the following month.

Q After the work was finished? A Yes.

Q And delivered. Did they all pay on the first of the month after the work was delivered? A No, not all.

Q In the cases where they didn't pay on the first of the month after the work was delivered, what was done with the charges? The work was charged on your books, wasn't it? A Yes.

Q How many of those accounts were you carrying on your books at the time you moved? A Possibly twenty.

Q Do you remember what they were? A No, I don't remember.

Q Could you tell without the books? A I had those accounts in the ledger when I moved.

Q Did your ledger show the items? A No.

Q In order to know the items you would have to refer to the order book, wouldn't you? A Yes, certainly.

Mr. O'Connor: That's all.

on of and N. t.

708 FERDINAND N. VOLKERT recalled for further direct examination by Mr. O'Connor:

Q You testified in this case a few days ago, didn't you? A Yes.

Q You have been subpoenaed to produce certain books and papers, to-wit, all parts of your ledger and job tickets referring to work done by you for the Lumbermen's Credit Association or William Clancy or Burton Stadden, since January first, 1899; have you brought those books and papers? A Yes.

Q Will you let me look at them? (Witness hands counsel papers). What is this loose sheet? A It is the—

Q Or rather, these two loose sheets numbered, apparently, 1 and 3 in the upper right hand corner? A They are leaves out of our ledger.

Q I should judge from the form of the leaves that it is this patented ledger, what is called the loose leaf ledger? A Loose leaf system, yes, sir.

Q I notice these entries: "1899, 3-15"—by the way, what do the figures "3—15" stand for? A I believe they stand in the date column, third month, fifteenth day.

Q So that it means March 15? A Yes.

Q "1899, 3—15, 5084, Bdg. 22 books Mala 75." The figures "3—15" you have explained; what do the figures "5084"— A It is our job number.

709 Q You say the number "5084" refers to the number of the job ticket? A Yes.

Q Relating to this particular work? A Yes.

Q Have you that job ticket with you? A Yes, right here, 5084.

Q Let me have it if you please. (Witness hands counsel job ticket). What do the letters "Bdg" stand for? A Binding.

Q What do the letters "Mala" stand for? A Manila.

Q 75, is the price charged for work, I presume, 75 cents, is it? A That depends, I don't know.

Q What is it? A That is the price there, undoubtedly, yes.

Q This job ticket, I should infer, is really the order for the work, is it? A That is the order for the work.

Q Was this work done for the Lumbermen's Credit Association? A Yes.

Q It is a part of the work which you included in the bills you rendered them, to the Lumbermen's Credit Association as you stated the other day, is it? A Yes.

Mr. Pease: Don't lead the witness.

Mr. O'Connor: We offer this entry and the job ticket in evidence.

Mr. Pease: We object for the reason that it refers to
710 work done prior—in connection with the book published prior to January, 1901 edition of the Defendant's Reference Book, and does not refer to any book in issue in this case, and is incompetent, irrelevant and immaterial and has no connection with the issues.

Job ticket marked Complainant's Exhibit Job Ticket 1.

Q In the order or job ticket, opposite the word "binding" I notice the word or letters "Malo", or "la", I guess it is; is it the same as in the— A I think that is manila, yes.

Q The next entry is "1899, 3—28, 5314", ditto marks under "Bdg", "23", ditto marks under "books", ditto marks under "Mala", "75". The figures "3—28" mean what? A That is in the date column?

Q Yes. A That must mean the date, third month, the 28th.

Q March 28th. What do the figures "5314" refer to? A All those figures between the blue lines?

Q Yes. A The job number.

Q Have you the job ticket to which these numbers refer, job ticket 5314? A Yes (handing counsel ticket).

Q On this job ticket I notice the words "same list", what do they mean? A I should suppose that there was a list with that order that it refers to.

711 Q What kind of a list? A That I can't tell, what kind of a list, must have been—

Q The job ticket 5084 reads, " take out states according to list" To what list did that order refer? A I don't know but what there was a list with the book.

Q A list of states? A List of states, yes, I presume that was it.

Q And what would you say then as to the words "Same list" in job ticket 5314? A Well, I presume there was another list, or a list of some kind which we were to follow.

Q A list of states?

Mr. Pease: Object to the question as leading.

Q Do you mean a list of states?

Mr. Pease: Object to the question for the same reason.

Q Answer. A Why, I can't tell whether it was a list of states or whether it was a list of numbers or sheets or what, I couldn't remember that.

Q Do you know what has become of that list? A I do not, unless it was returned with the books.

Q The next entry in the ledger is as follows: "1899, 7—10 7167, Bdg 2 Bks 1.50" The figures "7—10, 1899" I suppose refer to the date? A Yes.

Mr. O'Connor: I offer this last job ticket in evidence, together with the entry of March 28, which I read.

712 Mr. Pease: We object for the reason it is incompetent, irrelevant and immaterial, and not been connected with the issues in this case.

Paper marked Complainant's Exhibit Job Ticket 3.

Q The work of binding the 23 books charged under date of March 28, is a part of the work for which you rendered bills to the Lumbermen's Credit Association, is it not?

Mr. Pease: I object to the question as leading.

Q Was that work included in the bills which you rendered to the Lumbermen's Credit Association and which they paid?

Mr. Pease: Objected to for the reason the bills are the best evidence, and also for the reason the question is leading.

Q Answer the question. A The question is—

Q Did the Lumbermen's Credit Association pay you for the work of binding the 23 books charged under date of March 28th?

Mr. Pease: Object to the question for the reason that it is leading. A Yes, they paid for it.

Q Is it a part of the work to which you referred the other day in your testimony as done by you for the Lumbermen's Credit Association?

Mr. Pease: Object to the question as leading.

713 A It is part of the work I spoke of.

Q To what does the number 7167, in the item of July 10, 1899 refer? A Is that number between the blue lines?

Q Yes. A To the job ticket.

Q Have you that job ticket? A I guess so.

Q Let me see it? (Witness hands counsel ticket). "Bdg" in this charge I suppose means, binding? A Yes.

Q What do the letters "Bks" mean? A Books.

Q Do you remember to what books this binding refers? A I do not.

Q Do you remember the character of the books? A Why, no, not as far back as that, don't know what that was.

Q Do you remember the character of the 22 books of March 15, and the 23 books of March 28? A What year?

Q 1899? A Why, no, I do not.

Q You remember the general character of them?

Mr. Pease: We object.

A No, I don't know whether they were the same as we have been doing since or not. Long time ago.

Q Have you collected your pay for this work?

Mr. Pease: We object as immaterial, incompetent and irrelevant.

Q Answer the question. A I believe it shows there 714 on the sheet.

Q I ask you if you have collected your pay for it? Look at the sheet? A I presume we did.

Q From whom?

Mr. Pease: Objected to, incompetent, immaterial, irrelevant and not connected or related to any of the issues in this case.

Q From whom?

Mr. Pease: Same objection.

A Lumbermen's Credit Association.

Mr. O'Connor: We offer this item in the ledger, of July 10, 1899, and job ticket 7167, in evidence.

Mr. Pease: We object for the reason they are incompetent, irrelevant and immaterial, and not connected with any issue in this case.

Ticket marked Complainant's Exhibit Job Ticket 3.

Q In the ledger I notice this entry, "1899, 9—11, 8208, Bdg 14 bks Mala 75"; the figures "1899, 9—11" I suppose refer to September 11, 1899? A Yes.

Q The number "8208" I suppose refers to the number of the job ticket, does it? A Yes, if it is between those two blue lines.

Q Please let me see the job ticket. (Witness hands counsel ticket). The letters "bdg" I suppose mean, binding? A Yes.

Q "Bks"; and "Mala" means I suppose, Manila? 715 A Manila, yes, sir.

Q On the job ticket will you please read the words opposite the word "binding"? A "Manila cover". I don't know myself what that is on the bottom, unless it stands for, regular.

Q "Reg" isn't it, after the word cover? A Well, it is the two things, it has been something else and written over, I don't know what—

Q What is it now? A I don't know.

Q What would "reg" stand for in your business?

Mr. Pease: I object to the question.

A I think it stands for regular.

Q What would regular mean? A Should mean, regular manila,—regular Manila cover.

Mr. Pease: Might mean ruling, mightn't it? "Rlg"? A I guess not.

Mr. O'Connor: I offer in evidence the item of September 11, 1899, and the job ticket 8208.

Mr. Pease: Objected to for the reason it is incompetent, irrelevant and immaterial and not connected with the issued in the case.

Ticket marked Complainant's Exhibit Job Ticket 4.

Q The next item is "1899, 9—15, 8283 bdg 14" ditto marks under "bks", ditto marks under "Mala", "75"; the figures "1899, 9—15" refer to the date, I suppose, September 15, 1899, do they? A I think so.

Q And the number 8283 refers to the job ticket? A Job ticket.

Q Have you that job ticket? (Hands counsel ticket) Look at the job ticket and tell me when that work was ordered, if you please, the date? A Ninth month, the 13th, 1899.

Q What date? A Ninth month, the 13th.

Q September 13. (No answer).

Mr. O'Connor: We offer in evidence the item of September 15, 1899, and job ticket 8283.

Mr. Pease: We object, it is incompetent, immaterial, irrelevant and not connected with any issue in this case.

Ticket marked Complainant's Exhibit Job Ticket 5.

Q I notice this entry in the ledger, "1899, 12—26, 10232, rebdg 2 bks 1.50"; the figures "1899, 12—26" refer to the date, December 26, 1899, I suppose? A Yes.

Q The number, 10232 refers to the number of the job ticket, does it? A Yes.

Q Have you that job ticket? (Hands counsel ticket). What do the letters "rebdg" mean? A I think they mean rebinding.

Q "Bks" in all cases, of course, means, I suppose, books? A Books.

Q Look at this job ticket please, and tell me the date
717 when that work was ordered? A Twelfth month, the 20th, 1899.

Q December 12, 1899? A December 20, yes, 1899.

Mr. O'Connor: We offer the item of December 26, 1899 in the ledger, and the job ticket 10232, in evidence.

Mr. Pease: Same objections as before.

Ticket marked Complainant's Exhibit Job Ticket 6.

Q I notice in the ledger this entry: "1900, 3—13, 12041, bdg 23 bks Mala 1.15" and under it, "12025" with a brace connecting the two numbers "12041" and "12025", ditto marks under the letters "bdg", "23" under "23", ditto marks under "bks" and ditto marks under "Mala" and "1.15" under "1.15". In all cases "bdg", I suppose, is the abbreviation of binding? A Yes.

Q And "bks" of books? A Yes.

Q And "Mala" of Manila? A Yes.

Q Both of these items are under one date, are they not? A Yes, one date given there.

Q That date is what? A Third month, the 13th.

Q March 13, 1900, is it not? A I believe that is 1900.

Q The numbers 12041 and 12025 refer, I suppose, to the job tickets? A I think so.

Q Have you those tickets? Look at them please and give me the dates of them, the dates when the work was or-
718 dered? A 12041 was ordered on March 12.

Q What year? A The year is not given here.

Q When was the work in 12025 ordered? A 12025 was ordered the third month, the 10th, no year given.

Q But they refer to the year 1900, do they not? A I presume they do.

Q Please look at 12041 and tell me what the work ordered was, read it off, if you please. A "One book take out states and bind in Manila as per list with other book."

Q Please look at job ticket 12025 and tell me what that work ordered was? A "One book take out stated and bind in Manila cover as per list".

Mr. O'Connor: We offer in evidence the two items of March 13, 1900 in the ledger, and the two job tickets numbered 12025 and 12041.

Mr. Pease: Same objections.

Tickets marked respectively, Complainant's Exhibit Job ticket 7 and 8.

Q I notice the following item, "1900, 5—29, 13659, rebdg 2 bks, 1.50", the figures "1900, 5—29" refer to the date, I suppose, May 29, 1900? A Yes.

Q The number, 13,659 is the job ticket number, is it 719 not? A Yes.

Q Have you that ticket with you? (Hands counsel ticket). Will you please tell me the date when that work was ordered? A Fifth month, the 21st.

Q What was the work? A Two books.

Q What were you to do with them? A Put back in cover.

Q "Rebdg" in this entry, means the same in this case as in the other case, rebinding, I suppose? A Means rebinding.

Q Isn't the date of the order, May 21, and the date of billing May 29? Look and see, if you please. A The date of the order is the fifth month, the 21st.

Mr. O'Connor: We offer in evidence the item of May 29, 1900 in the ledger and the job ticket numbered 13659.

Mr. Pease: Same objections.

Ticket marked Complainant's Exhibit Job Ticket 9.

Q I notice in the ledger this entry: "1900, 9-10, 15793 Mala, bdg 22 books 1.10". The figures "1900, 9—10" refer to the date of September 10, 1900, I suppose? A Yes.

Q The number 15793 is the job ticket number is it? A Yes, sir.

Q Will you please give me the job ticket if you have it? (Witness hands counsel ticket). What was the date when that work was ordered? A The ninth month, 4, 1900.

Q That is, September 4, 1900? A Yes.

720 Q What was the work ordered? A Book, take out states named and bind in manila as usual.

Mr. O'Connor: We offer in evidence this entry in the ledger, of September 10, 1900, and this job ticket numbered 15793.

Mr. Pease: Same objections.

Ticket marked Complainant's Exhibit Job Ticket 10.

Q The next entry in the ledger is: "1900, 9—14, 15916, manila, bdg 22 books 1.10". The figures "1900, 9—14" refer to the date of September 14, 1900, I suppose? A Yes.

Q The number 15916 is the number of the job ticket is it? A Yes.

Q Have you that job ticket? (Witness hands counsel ticket) What is the date when the work was ordered? A Ninth month, 11, 1900.

Q What work was ordered? A Take out states on list and bind with manila cover as usual.

Q I notice a white paper attached to that ticket, what is it? A It is a list of the states which were to be taken out.

Q Read off the states, if you please. A Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Louisiana, Missouri, Maryland, Massachusetts,
Mississippi, North Carolina, New Hampshire, New
721 Jersey, New York, Pennsylvania, Rhode Island, South
Carolina, Vermont, Virginia and West Virginia.

Q On this job ticket, and on a number of the other job tickets I have noticed the word "rush", what does that mean? A That means quick.

Mr. O'Connor: We offer in evidence the entry in the ledger of September 14, 1900, and the job ticket numbered 15916.

Mr. Pease: Same objections as before.

Ticket marked Complainant's Exhibit Job Ticket 11.

Q The next entry in the ledger is "1901, 1—25, 19361, put two books back in old cover, 1.50"; the figures "1901, 1—25" refer to the date of January 25, 1901, I assume? A I think so.

Q The number 19361 refers to the number of the job ticket, does it? A Yes.

Q Let me see that job ticket. (Witness hands counsel ticket) Please tell me the date when the work was ordered? A First month, 23, 1901.

Q And what was the work ordered? A Two books put back in old cover.

Mr. O'Connor: We offer in evidence this entry of January 25, 1901 in the ledger, and the job ticket numbered 19361.

Mr. Pease: Same objections.

Ticket marked Complainant's Exhibit Job Ticket 12.

722 Q All of this work to which you have testified is a part of the work for which the Lumbermen's Credit Association paid you, is it not?

Mr. Pease: Objected to as leading.

Q Have you been paid for this work?

Mr. Pease: Objected to as immaterial.

A Yes.

Q By whom? A Lumbermen's Credit Association, I think.

Cross-Examination by Mr. Pease.

Q You have in each instance testified from the job ticket to which your attention has been called, have you not? A Yes.

Q And you have given simply what the ticket shows, or the information contained on the ticket, haven't you? A Yes, sir.

Mr. Pease: I move to strike out all the evidence given by the witness at this session.

Re-direct Examination by Mr. O'Connor.

Q Mr. Volkert, do you not remember that you did work of this kind, of the kind mentioned in these job tickets, for the Lumbermen's Credit Association?

Mr. Pease: Object to the question as leading, highly
723 improper, as Mr. O'Connor must know, and not re-direct examination.

A Am I to answer that question?

Q Yes. A I remember doing some of the work; I remember some of it that we have on those tickets.

Q In whose hand writing is job ticket 18361?

Mr. Pease: Objected to as not re-direct.

A I couldn't tell you, I would have to—I don't know.

Q Is it not in the hand writing of some person who is in your employ?

Mr. Pease: I object to the question for the reason that it is leading and not re-direct examination.

Mr. Atwood: The witness says he don't know.

Mr. O'Connor: He hasn't answered that question he doesn't know.

Q Answer the question.

A I don't think that the person who wrote this is now in our employ.

Q Was the person who wrote it in your employ at the time the order was taken? A I should think he must have been,—or she.

Q In whose hand writing is job ticket 15,916?

Mr. Atwood: If you know.

A I don't recognize those hand writings. I could make a guess, but nothing certain about it.

724 In whose hand writing do you think it is?

Mr. Pease: I object.

Mr. Atwood: You don't want him to guess?
Mr. O'Connor: I want to know.
Q Whose hand writing do you think it is?
Mr. Pease: I object to the question as calling for the opinion.
A I would have to give several names. I really can't recognize them.
Q Give us several names.
Mr. Pease: Objected to as not re-direct.
Mr. Atwood: Want a list of all his employes at that time?
Mr. O'Connor: I want the several names that he thinks.
A It may have been written by Frank Nickol, or by Miss Alice Kobenick, possibly still by somebody else, I couldn't say.
Q In whose hand writing is ticket 15793?
Mr. Pease: Same objection.
A Perhaps in the same as the others.
Mr. Atwood: Perhaps not?
A May not be.
Q Do you recognize the hand writing of any of the tickets to which you have testified? A Not positively.
Examination adjourned subject to notice.

725 October 31, 1902, 2 o'clock P. M.

Met pursuant to notice.
Present, as before.

WILLIAM A. DOUGLAS called as a witness on behalf of complainant, being first duly sworn, testified as follows:

Direct Examination by Mr. O'Connor.

Q State your name? A William A. Douglas.
Q What is your occupation? A Manager of R. G. Dun & Company's Chicago office.
Q How long have you been connected with R. G. Dun & Company? A Twenty-six years.
Q How long have you been Manager of their Chicago Office? A At least twelve years.
Q Look at the paper which I now show to you, marked Complainant's Exhibit 1, October 31, 1902, and state who signed the signatures? A Chicago Circular Typewriting Company, W. C. Thorbus, Manager.
Q Who signed that signature? A Mr. W. C. Thorbus.

Q The date of that paper I believe is— A Contract date, November first.

Q 1898? A 1898.

726 Q Is that the only agreement or subscription under which any books were furnished to Thorbus or the Chicago Circular Typewriting Company by R. G. Dun & Company since November first, 1898?

Mr. Pease: Objected to as immaterial, irrelevant and incompetent.

A Yes, sir.

Q What editions of R. G. Dun & Company's book were furnished to him each year under that contract?

Mr. Pease: Objected to as immaterial and irrelevant.

A September and March.

Q That contract drawn to run for one year? A Yes, sir.

Q After it expired, or about its expiration was it renewed?

Mr. Pease: Same objection.

A It was not.

Q Was it not renewed? A Yes, sir.

Q Was the renewal in writing? A Yes, sir.

Q Look at the paper which I now show to you marked Complainant's Exhibit 2, October 31, 1902, and state what it is?

Mr. Pease: Same objection.

A The renewal agreement, signed W. C. Thorbus.

Q It refers to the renewal of a subscription, what is the subscription to which it refers?

Mr. Pease: Same objection.

A Calling for the September and March issues of the

727 reference book.

Q It is this subscription or agreement marked Complainant's Exhibit 1, October 31, 1902?

A Yes, sir, a renewal of the same agreement.

Q After the subscription expired under that renewal was it renewed again? A Yes, sir.

Mr. Pease: Objected to as immaterial.

Q Look at the paper which I now show to you marked complainant's Exhibit 3, October 31, 1902, and state what it is.

Mr. Pease: Objected to, shows for itself.

A Renewal agreement of the original subscription.

Q The subscription to which it refers is what?

Mr. Pease: Objected to.

A Date of November first, calling for September and March reference books.

Q It is this subscription marked Complainant's Exhibit 1, October 31, 1902?

Mr. Pease: Objected to as leading?

A Yes, sir.

Q After the subscription expired by that renewal was it renewed again?

Mr. Pease: Same objection.

A Yes, sir.

Mr. Pease: Incompetent, immaterial and irrelevant.

728 Q Look at the paper which I now show you marked Complainant's Exhibit 4, October 31, 1902, and state what it is?

Mr. Pease: Objected to, shows for itself.

A Renewal of contract dating November first.

Q Of what contract is it a renewal?

Mr. Pease: Objected to as immaterial.

A Of the original contract dating November first, 1898.

Q This agreement marked Complainant's Exhibit 1, October 31, 1902?

Mr. Pease: Objected to as leading.

A Yes, sir.

Q By whom were these renewal agreements signed? A Mr. W. C. Thorbus.

Q The same person who signed the original agreement?

Mr. Pease: Objected to as leading.

A Yes, sir.

Mr. O'Connor: We offer these exhibits in evidence.

Mr. Pease: Objected to as incompetent, irrelevant and immaterial, not connected with any of the issues in this case.

Cross Examination by Mr. Pease.

Mr. Pease: Without waiving any objections to the testimony of this witness, we will ask questions on cross examination.

729 Q When did you first meet Mr. Thorbus? A To my recollection on the date of the signing of the original agreement, November, 1898.

Q Did you meet him on that day? A I met him on that day, yes, sir, the date of the signing of the contract, which dates November first.

Q Where did you meet him? A He came to my own office —to our office and in my presence signed the contract.

By Mr. O'Connor: Q Is that contract now in existence? A No, sir.

Q What has been done with it?

Mr. Pease: Objected to, incompetent, irrelevant and immaterial.

A It was cancelled.

Q When?

Mr. Pease: Same objection.

A At the expiration of the first six months of the contract dating November first, 1901.

Q April 30? A Yes, sir.

Q 1901? A No, 1902.

Q Cancelled April 30, 1902? A Yes, sir.

Mr. Atwood: Same objection to these questions.

By Mr. Pease: Q Do you know Mr. Fish of the Foster Agency?

Mr. O'Connor: Objected to as immaterial and not proper cross examination.

730 Q Go ahead. A Am I compelled to answer?

Mr. O'Connor: Answer the question, subject to my objections.

A Yes.

Q How long have you known him?

Mr. O'Connor: Objected to as immaterial and not proper cross examination.

A I should say about a year.

Q When did first meet him?

Mr. O'Connor: Objected to as immaterial and not proper cross examination.

A About a year ago.

Q Where?

Mr. O'Connor: Objected to as immaterial and improper cross examination.

A To the best of my recollection in our office.

Q In this city? A Yes, sir.

Q Who is any one, was with him?

Mr. O'Connor: Same objection.

A I don't recollect. Don't know there was any one.

Q Did Mr. Fish say anything to you at that time about instituting a suit of the character of this one against the Lumbermen's Credit Association?

Mr. O'Connor: Objected to as immaterial and not proper cross examination.

A He spoke of the matter, yes.

731 Q What did he say?

Mr. O'Connor: Same objection.

A I do not recall the substance of the conversation. He referred to the fact that the Lumbermen's were copying from us.

Q What else did he talk about during this conversation? A I don't remember anything else.

Q How long was he there?

Mr. O'Connor: Same objection.

A I don't recall.

Q Well, about how long?

Mr. O'Connor: Same objection.

A I do not know.

Q Half an hour?

Mr. O'Connor: Same objection.

A I should say not.

Q Fifteen minutes?

Mr. O'Connor: Same objection.

A He saw my partner.

Q Who is your partner?

Mr. O'Connor: Same objection.

A Mr. Griswold, now deceased.

Q Was Mr. Fish there at your office fifteen minutes on this occasion?

Mr. O'Connor: Same objection.

A I do not recall the length of his visit.

732 Q Can't you fix it approximately?

Mr. Pease: Same objection.

A Might have been there ten minutes.

Q Who else did you talk to about this matter prior to that time, about this suit?

Mr. O'Connor: Same objection.

A I have no recollection of talking to any one.

Q And Mr. Fish was the man who first suggested it to you, was he not?

Mr. O'Connor: Same objection.

A I am not clear on that point.

Q What is your best recollection?

Mr. O'Connor: Do you know, Mr. Douglas?

A I do not, no, sir.

Q Do you recall any one else with whom you talked in reference to a suit against the Lumbermen's Credit Association, of this character, prior to that time?

Mr. O'Connor: Same objection, immaterial, and not proper cross examination.

A The best of my recollection, we were suspicious that Clancy was copying from us, before that.

Q *Just answer the question Mr. Douglas, we didn't ask* you for your suspicions, I asked you a plain, fair, question that any honest man can answer.

Mr. Pease: Will you please read the question Miss Reporter?

733 Question read.

A I do not recollect.

Q Did Mr. Fish at that time show you any paper or papers?

Mr. O'Connor: Objected to as immaterial and not proper cross examination.

A I do not recollect.

Q Did he show you a list of names?

Mr. O'Connor: Same objection.

A Not to my recollection, sir.

Q Did he show you any book?

Mr. O'Connor: Same objection.

A Not to my knowledge. The transaction had been carried on by Mr. Griswold.

Q Did you see Mr. Fish or talk with him in connection with this matter after that time?

Mr. O'Connor: Same objection.

A To the best of my recollection, once or twice.

Q When after?

Mr. O'Connor: Same objection.

A I do not recall the dates.

Q How long afterward?

Mr. O'Connor: Same objection.

A Might have been a month or two.

Q Was it prior to the filing of this bill in January of this year? The bill in this case?

734 Mr. O'Connor: Same objection.

A If my memory serves me correctly, it was after the filing of the bill.

Q Well, are you ready to state positively that you did not talk with Mr. Fish about this matter but once before the bill was filed?

Mr. O'Connor: Objected to as immaterial and not proper cross examination.

A I am not positive on that point.

Q Did Mr. Fish call at your office to talk with Mr. Griswold more than once?

Mr. O'Connor: Same objection.

A I think he did.

Q How many times did you see him there talking with Mr. Griswold?

Mr. O'Connor: Same objection.

A I think he called twice, perhaps three times.

Q Before the first of January, 1902?

Mr. O'Connor: Same objection.

A I am not positive whether all the visits were before or since January first.

Q When did you last see Mr. Fish at your office?

Mr. O'Connor: Same objection, immaterial and not proper cross examination.

A To my knowledge I haven't seen him for at least six months.

735 Do you know Mr. Glass who is or was formerly connected with the Foster Lumber Mercantile Agency?

Mr. O'Connor: Same objection.

A I know of him.

Q Do you know him personally?

Mr. O'Connor: Same objection.

A I am not sure that I ever met him.

Q Did you ever talk with him about this suit?

Mr. O'Connor: Same objection.

A Not to my recollection, Mr. Glass.

Q Will you say that you did not?

Mr. O'Connor: I object, the witness has stated that he doesn't recollect that he did, I don't see how he can be more definite.

Q You mean that you don't recollect whether you did or not talk with Mr. Glass?

Mr. O'Connor: Same objection.

A I know of him, but do not recall ever having met him myself.

Q Did you ever see-- A I think he saw Mr. Griswold.

Q Do you know when he saw Mr. Griswold?

Mr. O'Connor: Same objection.

A I do not.

Q Did you see him in your office?

Mr. O'Connor: Same objection.

736 A Not to my knowledge.

Q Do you know Mr. Moberly?
Mr. O'Connor: Same objection.
A No, sir.
Q E. E. Moberly, connected with the Foster Lumber Mercantile Agency? A No, sir.
Q Have you ever met him?
Mr. O'Connor: Same objection.
A No, sir, not to my knowledge.
Q Do you know whether Mr. Griswold ever met him?
Mr. O'Connor: Same objection.
A Never heard of any such party before to my knowledge as being connected with that concern.
Q Do you know Mr. Edwin F. Abbott, one of the solicitors for the complainant in this case?
Mr. O'Connor: Same objection.
A One of the solicitors for what?
Q For the complainant, R. G. Dun & Company, in this case?
Mr. O'Connor: Same objection.
A One of the solicitors?
Q Yes. Don't you know that he is one of the attorneys of record for R. G. Dun & Company in this case?
Mr. O'Connor: Same objection.
A I do not know it.
Q Did you ever meet him, Edwin F. Abbott?
737 Mr. O'Connor: Same objection.
A Not to my knowledge.
Q Do you know a lawyer in this city by that name?
Mr. O'Connor: Same objection.
A No, sir.
Q Did you have charge of this matter for R. G. Dun & Company with Mr. Griswold?
Mr. O'Connor: Same objection.
A No, sir, Mr. Griswold took charge of it himself.
Q Well, you conferred with him, or he with you, regarding the matter, did you not?
Mr. O'Connor: Same objection.
A Not very much.
Q Well, you did to some extent? A He attended to that branch of the business.
Q Well, you knew of the instituting of this proceeding, did you not?
Mr. O'Connor: Same objection.
A Yes, sir.

Q And how long had it been, how long before the bill was filed did you know about it?

Mr. O'Connor: Same objection.

A I do not recall.

Q With whom else if any one did you talk regarding this proceeding?

738 Mr. O'Connor: Same objection.

A I do not know, other than our general counsel.

Q You mean by that, Messrs. Hoyne, O'Connor & Hoyne? A Yes, sir.

Q Did you ever talk with any of the employes of the Foster Agency?

Mr. O'Connor: Same objection.

A Employes?

Q Yes. A Not to my knowledge, sir.

Q Ever seen any of them in your office?

Mr. O'Connor: Same objection.

A Not to my knowledge.

Q When did you first learn of the Foster Lumber Mercantile Agency? A I do not recall, sir.

Q How long have you known of such a concern?

Mr. O'Connor: Same objection.

A I think I heard of it in a general way for two or three years.

Q Prior to what time?

Mr. O'Connor: Same objection.

Q You mean the last two or three years? A Yes.

Q You knew what line of business they are engaged in, did you?

Mr. O'Connor: Same objection.

A Yes, sir.

739 Q What is it? A Reporting the lumber trade, same as Clancy.

Q Don't you know that the Foster Agency furnished the information or evidence upon which this proceeding was based and begun?

Mr. O'Connor: Same objection. Immaterial and not proper cross examination. Objected to as calling for a mere conclusion.

Mr. O'Connor: Do you know the information upon which this suit commenced, of your own knowledge?

Mr. Pease: Mr. O'Connor, I submit that is highly—I will put it this way, highly improper. Let me change that question.

Q Don't you know that the Foster Agency furnished information to R. G. Dun & Company or their counsel regarding the subject matter of this suit?

Mr. O'Connor: Same objection.

A I understand they assisted the counsel.

Q In what way?

Mr. O'Connor: I object to the statement of the witness as to his understanding, as stating a mere conclusion?

A I do not know.

Q Don't you know that the employes of the Foster Agency made the affidavits upon which the motion for preliminary injunction was made in this case?

740 Mr. O'Connor: Objected to as immaterial, not proper cross examination.

A I have not read the affidavits.

Q I didn't ask you that. Don't you know they did file affidavits in this case for that purpose?

Mr. O'Connor: Objected to.

A I did not know, nor do I know know the affidavits that have been made, this being in the hands of Mr. Griswold.

Q When did Mr. Griswold die? A August, 1902.

Q Who has had charge of this matter since for R. G. Dun & Company, connected with your office?

Mr. O'Connor: Same objection.

A Our attorneys have had it in charge entirely, from the start.

Q Well, who connected with the office of R. G. Dun & Company has charge of the matter? A I, as Manager.

Q Well, is there any one else in this office, in the Chicago office that has charge of this matter?

Mr. O'Connor: Same objection.

A No, sir.

Q Is there any one else generally connected with R. G. Dun & Company that has charge of this matter except yourself?

Mr. O'Connor: Same objection.

A The general counsel in New York would confer 741 with our local attoreys, Hoyne, O'Connor & Hoyne.

Q I mean any one in connection with the office of R. G. Dun & Company? A In Chicago?

Q In New York, either. A Those in charge of—the trustees in charge of the business would confer with our local counsel.

Q This litigation has been managed from your office, that is, the local office, has it not?

Mr. O'Connor: No, he didn't say so.

Mr. Pease: Well, I am asking.

Mr. O'Connor: He has already stated that it is managed from New York as well as here.

Mr. Pease: If you want to testify, Mr. O'Connor, we will give you a chance.

Mr. O'Connor: I want the witness—

Mr. Pease: The witness is of age and apparently intelligent, and I think he is competent to answer these questions if he can run R. G. Dun & Company's business here which he seems to be doing.

A What is the question?

Question read.

Mr. O'Connor: Same objection.

Q It has been managed by our local counsel in connection with our headquarters in New York City.

Q With whom here aside from yourself and Mr. Griswold, have the local counsel advised concerning this matter?

742 Mr. O'Connor: Same objection.

A No one else, to my knowledge.

Q Do you know that the Foster Agency have employed detectives and paid detectives in connection with this matter?

Mr. O'Connor: Same objection.

A I do not know the particulars about it.

Q Well, you knew that they have, generally?

Mr. O'Connor: Same objection.

A Foster?

Q Yes. A No, sir, I did not know it.

Q You do not know that? A No, sir.

Q And that they have employed and paid counsel in this case?

Mr. O'Connor: Same objection.

A I did not know it.

Q Well, do you know it now?

Mr. O'Connor: Same objection.

A I do not.

Q You did not know until to-day that Mr. Edwin F. Abbott was attorney,—one of the attorneys of record in this case?

Mr. O'Connor: Same objection.

A I did not know that he was connected with it in any way, sir, don't know him at all. Never heard of him before to my knowledge.

Q Did R. G. Dun & Company employ any detectives in connection with this matter to your knowledge?

743 Mr. O'Connor: Same objection.

A As I understand it, yes.

Q What do you understand about it?

Mr. O'Connor: Same objection. Object to the witness' answer as stating a mere conclusion, and move that it be stricken out.

Question read.

Mr. O'Connor: Objected to as immaterial and not proper cross examination, and because it calls for a mere conclusion.

Q From what do you understand that fact?

Mr. O'Connor: Same objection.

A I stated that my general understanding is that detectives were employed.

Q Who were they?

Mr. O'Connor: Same objection.

A I do not know.

Q When were they employed?

Mr. O'Connor: Same objection.

A I do not know.

Q How long were they employed?

Mr. O'Connor: Same objection.

A I do not know.

Q Don't you know that the detectives were employed by the Foster Lumber Mercantile Agency?

744 Mr. O'Connor: Same objection.

A No, sir.

Q And not by R. G. Dun & Company?

Mr. O'Connor: Same objection.

A No, sir.

Q Isn't that a fact? A I understand not.

Q Well, what do you know?

Mr. O'Connor: Same objection.

A I understand they were employed by R. G. Dun & Company.

Q Well, do you know they were not employed by the Foster Lumber Mercantile Agency?

Mr. O'Connor: Same objection, as stated before.

A I understand they were employed by R. G. Dun & Company.

Q Who in your office engaged them?

Mr. O'Connor: Same objection.

A I do not know.

Q Have you any records in your office that will show whether any detectives were employed in this matter or not?

Mr. O'Connor: Same objection, because records will speak for themselves.

A I do not know.

Q You don't know what?

Mr. O'Connor: Same objection.

A I do not know whether we have the records in the case in our office.

Q If detectives were employed by R. G. Dun & Com-
745 pany in this matter your office records or books would show it, would they not?

Mr. O'Connor: Objected to as immaterial and not proper cross examination, and because the records are the best evidence.

A Not necessarily.

Q Not necessarily? A Not necessarily, if employed by our attorneys.

Q Well, were the detectives in this matter employed by your attorneys?

Mr. O'Connor: Same objection.

A I understand so.

Q That is, Hoyne, O'Connor & Hoyne?

Mr. O'Connor: Same objection.

A Yes, sir.

Q Have you paid your attorneys anything for or on account of detective services in this matter?

Mr. O'Connor: Same objection.

A I do not know.

Q Will your books show that?

Mr. O'Connor: Same objection.

Q Show whether you have or not? A I can not tell.

Q What books would show it, if it is shown by any book in your office?

Mr. O'Connor: Same objection.

746 A The accounts with our attorneys would show.

Q In your general ledger? A I do not know.

Q Do you keep more than one set of books?

Mr. O'Connor: Same objection.

A It would be shown in the account with our attorneys.

Q Do you know of any such payment having been made?

Mr. O'Connor: Same objection.

A I do not know.

Q Or of any such indebtedness having been incurred?
Mr. O'Connor: Same objection.
A I understand there was some.
Q From whom? A I do not know.
Q When did you first learn that detectives had been employed?
Mr. O'Connor: Same objection.
A I don't recollect.
Q Do you know Mooney & Boland Detective Agency?
Mr. O'Connor: Same objection.
A I know there is such a concern.
Q Have you received any bills from that Agency for detective work in this matter?
Mr. O'Connor: Same objection.
A I do not know.
Q If any such bills were rendered you would know of it, would you not?
747 Mr. O'Connor: Objected to as immaterial and not proper cross examination, because the bills are the best evidence of what they contain.
A I would know if made since the death of Mr. Griswold.
Q How long prior to Mr. Griswold's death was he absent from the office?
Mr. O'Connor: Objected to as immaterial and not proper cross examination.
A He was absent for about three months.
Q And who had charge of the business during that time?
Mr. O'Connor: Same objection.
A I did.
Q What were your duties prior to Mr. Griswold's death?
Mr. O'Connor: Same objection.
A Manager of the Chicago office.
Q What was Mr. Griswold?
Mr. O'Connor: Same objection.
A General Manager of the Chicago District.
Q Well, what did Mr. Griswold do in connection with the business, how was the work divided between the General Manager of the Chicago office and General Manager of the Chicago District?
Mr. O'Connor: Same objection.
A I was Manager of the Chicago office, attending to the Chicago city business; Mr. Griswold had his headquarters
748 in Chicago with general supervision of the entire Chicago District.

Q What comprised the Chicago District?

Mr. O'Connor: Same objection.

A Large section with Chicago as its headquarters.

Q What section did it include?

Mr. O'Connor: Same objection.

A You wish to know each county and state?

Q Generally, I mean, what territory? A Well, about two thirds of Illinois, all of Iowa, part of Indiana; that is about it.

Q That is the territory in Illinois outside of the city of Chicago? A He has the supervision of the whole Chicago District.

Q Did the Chicago District include the city of Chicago? A Yes, sir.

Q Well, you were considered the head of the Chicago office were you not?

Mr. O'Connor: Same objection.

A What, you mean in this—

Q Yes.

Mr. O'Connor: When?

A I was considered Manager of the Chicago office, but Mr. Griswold had general charge of the whole district including Chicago.

749 Q Well now, who was the first one in authority, you or Griswold?

Mr. O'Connor: Same objection, immaterial and not proper cross examination.

A Mr. Griswold.

Re-direct Examination by Mr. O'Connor.

Q This case is under the control of the New York office is it not?

Mr. Pease: Objected to as leading.

A Yes, sir.

Mr. O'Connor: We offer in evidence a copy of the will of Robert G. Dun.

Mr. Pease: We object as incompetent, immaterial improper and not properly authenticated.

Will marked Complainant's Exhibit 5, October 31, 1902.

Mr. O'Connor: I offer in evidence the subpoena served on William Clancy and Burton W. Stadden; and I want the record to show that neither of them has appeared in Court,

but both have failed to appear in answer to the summons, and has failed to bring or send any of the books for which the subpoena calls.

Subpoena marked Complainant's Exhibit 6, October 31, 1902.

Mr. O'Connor: I offer in evidence this January, 1901 copy of the reference book of the Lumbermen's Credit
750 Association.

Mr. Pease: Objected to as immaterial, incompetent and irrelevant, not connected with the issues. No objection is made to the admissibility of the books on the ground that they have not been properly identified.

Book marked Complainant's Exhibit 7, October 31, 1902.

Mr. O'Connor: I offer the July, 1901, copy of the reference book of the Lumbermen's Credit Association, in evidence.

Mr. Pease: Same objections.

Book marked Complainant's Exhibit 8, October 31, 1902.

Mr. O'Connor: I offer this January, 1902, copy of the reference book of the Lumbermen's Credit Association in evidence, except the ratings, figures and letters written in ink in the body of the book, that is to say, the printed portion only is offered in evidence.

Mr. Pease: Same objections.

Book marked Complainant's Exhibit 9, October 31, 1902.

THEODORE E. STEIN called as a witness on behalf of complainant, being first duly sworn, testified as follows:

Direct Examination by Mr. O'Connor.

751 Q State your name? A Theodore E. Stein.

Q What is your occupation? A Clerk.

Q In whose employ? A R. G. Dun & Company.

Q How long have you been in their service? A About four years.

Q Have you made any examination of the reference books of R. G. Dun & Company and the Lumbermen's Credit Association, with reference to the name of Loworn Bros. of Tallapoosa, Georgia? A Yes, I have.

Q Do you find that name in the reference book of R. G. Dun & Company?

Mr. Pease: Object to the question as leading.

A I do.

Q Where did you find it in that book? A I have some memoranda, I can refer to this?

Q You can refer to your memoranda. A The name first appeared in R. G. Dun & Company's book in September, 1901.

Q September edition of 1901; have you that edition here? A Yes, sir.

Q Where is it, will you please get it and please find that name in that book? How does the name appear in that edition? A As "Loworn Bros. Saw Mill", with no rating.

Q That is the first time the name ever appeared in R. G. Dun & Company's book, as I understand? A Yes, sir.

Q Have you made an examination of the reference 752 book of the Lumbermen's Credit Association with reference to the same name? A I have.

Q When did it first appear in that book?

Mr. Pease: I might as well make a general objection to apply to this whole examination, on the ground that it is incompetent, irrelevant and immaterial, and no way connected with the issues involved in this case, and that applies to all of this examination without reiterating it to every question.

Mr. O'Connor: That is all right.

Mr. Atwood: We make no objection to this witness testifying to what he has found in the books of R. G. Dun & Company and the Lumbermen's Credit Association on the ground that the books should be introduced in evidence instead of the testimony of this witness as to what the books show in regard to the names to which he may testify, or that his testimony is secondary instead of primary evidence, not waiving our objections heretofore made, subject to our examination of the books for the purpose of verifying the correctness of the witness' testimony. It being understood that the book examined and referred to by Mr. Stein in his testimony have been marked by the reporter for identification Complainant's Exhibits 10 to 16 inclusive as to the Lumbermen's Credit Association books, and for identification Complainant's Exhibits 17 to 33 inclusive as to R. G. Dun & Company's books, and reference may be had to the same by either party for any purpose in the cause.

A In January, 1902 edition.

Q How did it appear in that book? A As "Lo-
753 worn Bros., rated, blank 2.

Q Look at the defendant's January, 1902 book and see how it appears in that book? A The same thing, Loworn Bros, Saw Mill, blank 2.

Q Is there a key to the rating in each of the books of R. G. Dun & Company and the Lumbermen's Credit Association? A There is as far as I have seen, yes, sir.

Q Will you look at the key in the book of R. G. Dun & Company and state what the rating which they give to Loworn Bros. signifies? A They give no rating.

Q And, as I understand you, no capital rating was given in the book of the Lumbermen's Credit Association? A No, sir.

Q What does the "2" signify, according to the key of the Lumbermen's Credit Association, in their book? A Medium pay.

Q It refers to the credit and not to the capital of the party? A Exactly.

Q Did you make any examination of the reference books of R. G. Dun & Company and the Lumbermen's Credit Association with reference to the name of Lindsay & Swain, Fairmount, Indiana? A Yes, sir.

Q When did that name first appear in the reference book of R. G. Dun & Company? A In September, 1897.

Q How did it appear in that book? A As "Lindsay & Swain."

Q Spell the name. A "L-i-n-d-s-a-y & S-w-a-i-n"

754 Q How long, that is, through what editions of R. G. Dun & Company's reference book did that name appear in that way? A Until some time between September 1898 and March 1899.

Q When was it first corrected or changed in the reference book of R. G. Dun & Company? First change I have here is in March, 1899.

Q How did the name appear in that edition? A As "Lindsey & Swain."

Q Character and? A Character and.

Q How long did the name appear in that way in the subsequent editions of R. G. Dun & Company's reference book? A Until some time between September, 1900 and March, 1901.

Q When was the next change made in the name, in the ref-

erence book of R. G. Dun & Company? A The March, 1901 book carried the name as "Lindsey & Swaim". Depos... The... Stei...

Q When did you find that name in the reference book of the Lumbermen's Credit Association? A It first appeared in January, 1898.

Q How did it appear in that edition of the reference book of the Lumbermen's Credit Association? A As "Lindsay & Swain".

Q How long did it appear in that way in the reference book of the Lumbermen's Credit Association? A Until the July 1899 issue.

755 Q How did it appear in that edition? A It appeared as "Lindsey & Swain".

Q How long did the name appear in the reference book of the Lumbermen's Credit Association as you have last spelled it? Lindsey & Swain? A Until the July, 1901 edition.

Q What change was made in the name in that edition? A The last name was spelled "S-w-a-i-m."

Q That is, in the July, 1901 edition of the Lumbermen's Credit Association's reference book the name appeared as "Lindsey & Swaim"? A Yes, sir.

Q Have you made any examination of the reference books of R. G. Dun & Company and the Lumbermen's Credit Association with reference to the name "Waverly Bending Co. of Waverly, Ohio"? A Yes, sir.

Q When did that name first appear in the reference book of R. G. Dun & Company? A In June, 1898.

Q How did it appear in that edition. A As the "Waverly Bending Co."

Q How long did the name appear in that form in the reference book of R. G. Dun & Company? A In September, 1898, the name was carried as I have given it, and also the "Waverly Bent Wood Co.", both names being carried as given until September, 1898, when but one name was carried, the "Waverly Bent Wood Co."

Q Didn't only one name, the "Waverly Bent Wood
756 Co." appear in the July, 1899 edition? A I didn't consult the July, 1899 edition.

Q Will you please look at the book and see? A The "Waverly Bent Wood Co." not incorporated, appears in this book.

Q In July, 1899? A July, 1899.

of E.

Q Does the "Waverly Bent Wood Co." appear in that book? A It does not.

Q And as I understand the name "Waverly Bent Wood Co." alone appears in September, 1899? A Yes, sir.

Q How does the name appear in the subsequent editions of R. G. Dun & Company's reference book, that is after September 1899? A Up to January, 1900, when it was changed to the "Waverly Bending Co."

Q How did the name appear in the subsequent editions of R. G. Dun & Company's reference book after January, 1900? A Until September, 1901.

Q How did the name appear in the September, 1901 edition of R. G. Dun & Company's Book? A As the "Waverly Bent Wood Co."

Q When did the name first appear in the reference book of the Lumbermen's Credit Association? A In the July, 1901 edition.

Q How did it appear in that edition of the reference
757 book of the Lumbermen's Credit Association? A As the "Waverly Bending Co."

Q How did it appear in the January, 1902 edition of the reference book of the Lumbermen's Credit Association? A As the "Waverly Bending Co."

Q In the same way? A Same way.

Q Have you made an examination of the reference book of R. G. Dun & Company and the Lumbermen's Credit Association with reference to the name, "Marquardt Sash & Door Mfg. Co.," of Cleveland, Ohio? A Yes, sir.

Q Did you find that name in the reference book of R. G. Dun & Company? A Yes, sir.

Q When did it first appear in that book? A In July, 1898.

Q How did it appear in that edition of that book? A As "Marquardt Sash & Door Mfg. Co."

Q How did the name appear in subsequent editions of R. G. Dun & Company's reference book? A It was the same in all subsequent editions up to January 1902.

Q Did you find that name in the reference book of the Lumbermen's Credit Association? A Yes, sir.

Q When did it first appear in their book? A In July, 1899.

Q How did the name appear in the July, 1899 edition of that book? A As "Marquardt Sash & Door Mfg. Co."

758 Q How did it appear in subsequent editions of the reference book of the Lumbermen's Credit Association? The same.

Q In the same way? A Yes, sir.

Q Down to what date did you examine the subsequent editions of the reference book of the Lumbermen's Credit Association? A Down to January, 1902.

Q Including that edition? A Including that edition.

Q Did you make any examination of the reference books of R. G. Dun & Company and the Lumbermen's Credit Association with reference to the name Park & Stevens of Selma, Alabama? A Yes, sir.

Q Did you find that name in the reference book of R. G. Dun & Company? A Yes, sir.

Q When did it first appear in their book? A In July, 1897.

Q How did it appear in that edition of R. G. Dun & Company's book? A As "Park & Stevens."

Q How long did the name appear in that way in the subsequent editions of R. G. Dun & Company's reference book? A Until January, 1902.

Q Did you find that name in the reference book of the Lumbermen's Credit Association? A Yes, sir.

Q When did it first appear in their book? A January, 1900.

759 Q How did the name appear in that edition of the Lumbermen's Credit Association? The same, as "Park & Stevens."

Q How did the name appear in subsequent editions of the reference book of the Lumbermen's Credit Association? A The same.

Q In the same form? A In the same spelling and form, yes, sir.

Q Down to what date? A Down to and including the January, 1902 edition.

Q What rating, if any, was given to that concern in the reference book of R. G. Dun & Company? A At what time?

Q From the beginning? A They were rated "F3".

Q Say since September, 1899. A Since September, 1899, they have been rated "E2".

Q What does "E" signify, according to the key of R. G. Dun & Company? A From twenty to thirty-five thousand dollars.

Q The figure "2" refers to—? A The credit rating.

Q What does the "2" mean? A The "2" means, high credit.

Q How long did that rating appear as the rating of that concern in R. G. Dun & Company's reference book after September, 1899? A Down to the January, 1902 edition.

Q Down to and including January, 1902? A Yes, sir.

760 Q What rating, if any was given to that concern, Park & Stevens, in the reference book of the Lumbermen's Credit Association? A It was rated "C", which was equivalent to—

Q What does "C1" mean, according to the key of the Lumbermen's Credit Association? A From fifteen to twenty-five thousand dollars, good credit.

Q What does the one mean? A The one refers to good credit.

Q What does it mean, good credit? A Yes.

Mr. Pease: Is that what it means?

A That is what it stands for, yes, sir, I understand.

Mr. Pease: You don't understand correctly.

A High credit,

Q Look at the book and see. A Prompt pay.

Q How long was that rating given to that firm in the reference book of the Lumbermen's Credit Association after January, 1900? A Down to and including the January, 1902 edition.

Q Have you made an examination of R. G. Dun & Company's reference book with reference to the name of L. F. Goree, of Spigners Station, Alabama? A Yes, sir.

Q Did you find that name in R. G. Dun & Company's reference book? A Yes, sir.

Q By the way, all of the names to which you have re-
761 ferred are names in the lumber business, are they not? A Yes, sir.

Mr. Pease: Object to the question as leading.

Q What did the reference books of R. G. Dun & Company and the Lumbermen's Credit Association show as to the names which you have mentioned, in regard to the business in which the parties were engaged? A They were all either in the lumber business or lumber consumers—that what you mean?

Q They were connected with the lumber trade?

Mr. Pease: Objected to as leading.

A They were connected with the lumber trade.

Q When did the name of L. F. Goree, Spigners Station, Alabama, first appear in the reference book of R. G. Dun & Company? A In January, 1895.

Q How did it appear in that book, in that edition? A As "L. F. Goree."

Q Was any business mentioned in connection with the name? A I haven't got the business here.

Q Look at the earliest book which you have here, September 1897, and see what is stated with reference to the business of this party? A "Saw Mill &c."

Q Read the name just as it appears in the book, please; give us the name, business and rating as it appears in the book. A "L. F. Goree, Saw Mill, &c., F 2 1/2."

762 Q How long did the name appear in that way, the name and business and rating, appear in that way in R. G. Dun & Company's reference book? A Down to January, 1902.

Q What does "F 2 1/2" mean, according to the key of R. G. Dun & Company? A Ten to twenty thousand, high credit.

Q Did you find the name of L. F. Goree, Spigners Station, Alabama in the Lumbermen's Credit Assocition book? A Yes, sir.

Q When did it first appear in that book? A In January, 1902 edition.

Q Will you please look at that book and read how it appears in that book? A "L. F. Goree, Saw Mill, BC2."

Q Under what heading does it appear in that book? A Spigners Station.

Q How do you spell Spigners? A S-p-i-g-n-e-r-s.

Q The name Spigners, was spelled in the same way in the reference book of R. G. Dun & Company was it? Look and see will you please? A It was in 1897.

Q And has appeared in the same way in the subsequent editions of R. G. Dun & Company's book has it not? A I didn't look up that point particularly.

Q Well, will you please look at it? A It has, yes, sir.

763 Q What does the rating "BC2" signify, according to the key of the Lumbermen's Credit Association book? A From ten to fifteen thousand, medium pay.

Q Did you examine the reference book of R. G. Dun & Company and the Lumbermen's Credit Association with reference to the name, J. A. Browley, Gold City, Michigan? A Yes, sir.

Q Did you find that name in the reference book of R. G. Dun & Company? A Yes, sir.

Q When did it first appear in that book? A Some time prior to 1893.

Q You didn't go back to the first book in which it appeared? A No, sir.

Q How did it appear in the January, 1893 edition of R. G. Dun & Company's book? A As "J. A. Browley".

Q How was it rated in that edition? A "G3".

Q What does the raing "G3" signify, according to the key of R. G. Dun & Company? A Five to ten thousand dollors, good credit.

Q How long did the name appear as "J. A. Browley" with the rating which you have mentioned in the reference book of R. G. Dun & Company, after January, 1893? A Down to and including September, 1901.

Q Did you find that name in the reference book of the Lumbermen's Credit Association? A Yes, sir.

764 Q When did it first appear in their book? A In July, 1899.

Q How did the name appear in that edition of that book? A As "J. A. Browley", rated "E1".

Q What does the rating "E1" signify according to the key of the Lumbermen's Credit Association? A Three to five thousand dollars, prompt pay.

Q How long did the name appear as "J. A. Browley" with the rating "E1" in the reference book of the Lumbermen's Credit Association, after July, 1899? A Up to and including January, 1902 edition.

Q In what business was this party stated, in the reference books of R. G. Dun & Company and the Lumbermen's Credit Association to be engaged? A In the lumber business.

Q Did you make an examination of the reference books of R. G. Dun & Company and the Lumbermen's Credit Association with reference to the name of Frank Ratthle & Co., of Koepnick, Wisconsin? A Yes, sir.

Q Did you find that name in the reference book of R. G. Dun & Company? A Yes, sir.

Q When did it first appear in that book? A In September, 1900.

Q How did it appear in that edition of that book? A As "Frank Ratthle & Co."

Q What rating, if any, was given to the concern in that edition? A In September, 1900?

765 Q Yes. A No rating.

Q How long did the name appear as you have spelled it with a blank rating in the subsequent editions of R. G. Dun & Company's reference book? A Down to January, 1901.

Q How did the name appear in the January, 1901 edition of R. G. Dun & Company's reference book? A With the same spelling and the rating of "E 2 1/2".

Q What does the rating "E 2 1/2" signify according to the key of R. G. Dun & Company? A Twenty to thirty-five thousand, good credit.

Q How long did the name appear as Frank Ratthle & Co. and the rating, E 2 1/2 in the reference book of R. G. Dun & Company after January, 1901? A Down to and including September, 1901 edition.

Q Did that name appear in the reference book of the Lumbermen's Credit Association? A Yes, sir.

Q When did it first appear in their book? A In July, 1901.

Q How did it appear in that edition of their book? A In the same way, as "Frank Ratthle & Co.", rated "BC1".

Q Did the name appear in the same way with the same rating in any subsequent edition of the reference book of the Lumbermen's Credit Association? A Yes, sir, in the January, 1902 edition.

Q What does the rating "BC1" signify, according to
766 the key of the Lumbermen's Credit Association? A Ten to fifteen thousand dollars, prompt pay.

Q In what business was this concern stated to be engaged in the reference books of R. G. Dun & Company and the Lumbermen's Credit Association? A In the lumber business.

Q How was the name where this concern was located, spelled in the reference boks of R. G. Dun & Company and the Lumbermen's Credit Association? A The name of the town?

Q Yes? A I didn't make a note of that.

Q Will you please look at the books and see? A Spelled in the Lumbermen's Credit Association book, "Koepenick", the same way in R. G. Dun & Company's book.

Q Did you make an examination of the reference books of R. G. Dun & Company and the Lumbermen's Credit Asso-

ciation with reference to the name W. E. Brown, Pittsburg, Pa.? A Yes, sir.

Q Did you find that name in the reference book of R. G. Dun & Company? A Yes, sir.

Q When did it first appear in that book? A Some time prior to March, 1898.

Q How did the name appear in the March, 1898 edition of R. G. Dun & Company's book? A As "W. E. Brown".

Q What rating was given to the name in that edition? A There was no rating.

Q Did that name appear in subsequent editions of R. G. Dun & Company's book? A Down to and including 767 September, 1901 edition.

Q How did it appear in the subsequent editions? A In the same way, with no rating.

Q As W. E. Brown? A As W. E. Brown.

Q In what business was he stated to be engaged? A Lumber business.

Q Did you find that name in the reference book of the Lumbermen's Credit Association? A Yes, sir.

Q When did it first appear in their reference book? A In January, 1902.

Q How did it appear in that edition of their book? A As "W. E. Brown", with a blank rating, that is, no rating.

Q In both books where was the party mentioned as located? A At Pittsburg, Pennsylvania.

Q In all the cases that you have mentioned were the parties mentioned as being located in the same place? A Yes, sir.

Q In both books? A In both books.

Q In what business is W. E. Brown stated in the January, 1902 edition of the reference book of the Lumbermen's Credit Association to be engaged? A Lumber business.

Q Have you made an examination of the reference books of R. G. Dun & Company and the Lumbermen's Credit Association with reference to the name Phillips & Mittenzwey, 768 Saw Mill & Lumber Co., Pittsburg, Pa." ? A Yes, sir.

Q Did you find that name in the reference book of R. G. Dun & Company? A Yes, sir.

Q When did it first appear in their book? A Some time prior to January, 1896.

Q You didn't go back to the edition in which it first appeared? A No, sir.

Q How did it appear in the January, 1896 edition of R.

G. Dun & Company's reference book? A As "Phillips & Mittenzwey, Saw Mill & Lumber Co."

Q Of Pittsburg, Pennsylvania? A Of Pittsburg.

Q Was any rating given to the concern in that book? A Rating of "G 3 1/2".

Q Did that name appear in subsequent editions of R. G. Dun & Company's reference book? A Down to and including the September, 1901 edition.

Q What rating was given to it in the subsequent editions? A "G3 1/2".

Q The same rating? A The same rating, yes, sir.

Q What does the rating "G3 1/2" signify according to R. G. Dun & Company's key? A Five to ten thousand dollars, fair credit.

Q Did you find that name in the reference book of the Lumbermen's Credit Association? A Yes, sir.

769 Q When did it first appear in their book? A In the January, 1902 edition.

Q How did the name appear in that edition of the Lumbermen's Credit Association reference book? A In the same way as "Phillips & Mittenzwey, Saw Mill & Lumber Co."

Q Of Pittsburg, Pennsylvania? A Pittsburg, yes, sir; rated, "D1".

Q What does the rating "D1" signify according to the key of the Lumbermen's Credit Association? A Five to ten thousand dollars, prompt pay.

Q Have you made an examination of the reference books of R. G. Dun & Company and the Lumbermen's Credit Association with reference to the name Heinbaugh & Shriner, of Lake, Ohio? A Yes, sir.

Q Did you fiind that name in the reference book of R. G. Dun & Company? A Yes, sir.

Q When did it first appear in that book? A Some time prior to March, 1898.

Q You didn't go back to the first edition in which it appeared? A No, sir.

Q How did that name appear in the March, 1898, edition of R. G. Dun & Company's reference book? A As "Heinbaugh & Shriner."

Q What rating, if any, was given to the concern in that edition? A "L4."

770 Q What does the rating "L4" signify according to the R. G. Dun & Company key? A Less than $100, limited credit.

Q Did you find that name in the reference book of the Lumbermen's Credit Association? A Yes, sir.

Q When did it first appear in their book? A In July, 1900.

Q How did the name appear in that edition of the Lumbermen's Credit Association reference book? A As Heinbaugh & Shriner.

Q What rating, if any, was given to the concern in that edition? A "EF2."

Q What does the rating "EF2." signify according to the key of the Lumbermen's Credit Association? A One to two thousand, medium pay.

Q How long did the name of Heinbaugh & Shriner appear in R. G. Dun & Company's reference book after March 1898? A Down to July, 1901, when the name was changed.

Q Down to and including July, 1901, wasn't it? A Yes sir.

Q How did the name appear in the September, 1901 edition of R. G. Dun & Company's reference book? A As "Heinbaugh & Schreiner."

Q How long did the name appear as "Heinbaugh & Shriner" in the reference book of the Lumbermen's Credit Association? A Down to and including the January, 1902 edition.

771 Q What is the location of Heinbaugh & Shriner as given in the reference books of R. G. Dun & Company and the Lumbermen's Credit Association? A At Lake Ohio.

Q And in what business are they represented in both books to be engaged? A In the lumber business.

Q Have you made an examination of the reference books of R. G. Dun & Company and the Lumbermen's Credit Association with reference to the name of Curtis & Payne, of Selma, Alabama? A Yes, sir.

Q Did you find that name in R. G. Dun & Company's reference book? A Yes, sir.

Q When did it first appear in their book? A I mislaid the memoranda on that point; I believe, near as I can remember, it first appeared in their September, 1901 edition.

Q Will you please look at their book and see if you can't be more certain? A Here is the memorandum. Yes, sir. it appeared only in September, 1901 edition of R. G. Dun & Company's book.

Q How did the name appear in that edition? A As "Curtis & Payne Plg. Mill, Selma, Ala." Rating, "G3." Depos The Stei

Q What does the rating "G3" signify according to R. G. Dun & Company's key? A Five to ten thousand dollars, good credit.

Q Did you find that name in the reference book of the Lumbermen's Credit Association? A Yes, sir.

772 When did it first appear in their book? A January, 1902.

Q Edition? A Edition.

Q How did the name appear in that edition? A As "Curtis & Payne Planing Mill, Selma, Ala."

Q What rating, if any, was given to that concern in the reference book of the Lumbermen's Credit Association? A "D1."

Q In the January, 1902 edition of that book? A "D1."

Q What does the rating of "D1" signify according to the key of the Lumbermen's Credit Association? A Five to ten thousand dollars, prompt pay.

Q In all cases where you have spoken only of thousands, you have meant dollars? A Dollars, in the capital rating.

Q Have you made any examination of the reference books of R. G. Dun & Company and the Lumbermen's Credit Association with reference to the name Theo. C. Crawford, Huntsvills, Alabama? A Yes, sir

Q Did you find that name in the R. G. Dun & Company reference book? A Yes, sir.

Q When did it appear in that book? A In the September, 1901 edition.

773 Q How did the name appear in that edition? A As "Theo. C. Crawford, Sash, Door and blinds, Huntsville, Ala", rated D plus 1 1/2.

Mr. Pease: Is that spelled out in full, sash, door and blinds?

A I believe it was.

Q Rating? A Rating, D plus 1 1/2.

Q What does the rating D plus 1 1/2 signify, according to R. G. Dun & Company's key? A Fifty to seventy-five thousand dollars, high credit.

Q Did you find that name in the reference book of the Lumbermen's Credit Association? A Yes, sir.

Q When did it first appear in their book? A January, 1902 edition.

Q How did the name appear in that edition? A As "Theo. C. Crawford, S. D. & B., Huntsville, Ala", rated "A1".

Q What does the rating "A1" signify according to the key of the Lumbermen's Credit Association? A Fifty to seventy-five thousand dollars, prompt pay.

Q Look at the explanation in the front part of the reference book of the Lumbermen's Credit Association and see what the letters "S. B. & D." signify. A Sash, doors and blinds.

The taking of further testimony is adjourned to Saturday, November 1, 1902, at 10 o'clock A. M.

774 November 1, 1902.
10 o'clock A. M.

Met pursuant to adjournment.
Present as before.

Examination of Theodore E. Stein continued by Mr. O'Connor.

Q Mr. Stein, have you made an examination of any of the books of R. G. Dun & Company and the Lumbermen's Credit Association with reference to similarity of ratings in them? A Yes, sir.

Mr. Pease: Do you understand that our objection applies to the examination this morning?

Mr. O'Connor: Yes.

Mr. Pease: Same arrangement?

Mr. O'Connor: Same arrangement.

Q What books did you compare in that way? A The September, 1901 edition of R. G. Dun & Company and the January, 1902 edition of the Lumbermen's Credit Association.

Q What was the result of your examination,—what did you find upon your examination? You can take the memorandum book and refer to it. A You want me to give the entire—

Q Yes, give us the entire result of your examination. A I compared alone, personally, Michigan, in which I found 2974 names. You want me to give the entire results?

775 Q Yes. Where did you find those 2974 names? A In the book of the Lumbermen's Credit Association.

Q That is the total number of names? A That is the total number of names in the state of Michigan.

Q In what edition, the edition to which you referred, January, 1902? A Yes, sir. Of these 715 were not carried in R. G. Dun & Company's reference book.

Q To save time, when you refer in this examination to the Lumbermen's Credit Association reference book, you refer to the January, 1902 edition, do you? A Yes, sir.

Q And when you refer to R. G. Dun & Company's book, you refer to the September, 1901 edition? A Yes, sir.

Q You say that certain names were in the book of the Lumbermen's Credit Association which were not in R. G. Dun & Company's book? A Yes, sir.

Q What class of names did you find in their book which were not in R. G. Dun & Company's book? A I don't exactly understand what you mean by the question.

Q Are there certain names, or persons in certain lines of business carried in the book of the Lumbermen's Credit Association who are not carried in R. G. Dun & Company's book?

Mr. Pease: Objected to as leading.

A Yes, R. G. Dun & Company does not rate men, as a rule, who don't carry any stock, that is, commission lumber men,

776 Mr. Pease: I move to strike out that part of the answer following the word "yes" as not responsive to the question.

Q Are brokers carried in R. G. Dun & Company's book?

Mr. Pease: Objected to as leading.

A Not as a rule.

Q Did you find those classes carried in the book of the Lumbermen's Credit Association? A Yes, sir.

Q How many names did you find in both books?

Mr. Atwood: The same names?

Q Yes, how many of the same names?

Mr. Pease: In the state of Michigan?

Q Yes. A In the state of Michigan, 2259.

Q Of those names did you find any that had the same or similar ratings?

Mr. Pease: Objected to as leading.

A Yes, sir.

Q How many? A 868.

Mr. Atwood: The same rating?

A The same rating, similar ratings.

Mr. Pease: Object to the question as double, same or similar.

Q Tell us, Mr. Stein, what you found as to the ratings given to the 2259 names in both books? A Of these rat-
777 ings 571 bore a similar capital rating; 109 had similar reference ratings, that is, they referred to headquarters of a firm in some other town which were similar in both books. 188 bore no rating at all as to capital in either book.

Q What was the next state that you examined in both books? A Minnesota.

Q What did you find in your examination of that state? A The total number of names in the book of the Lumbermen's Credit Association, 1488, of these 348 were not in R. G. Dun & Company's book, leaving 1140 names in both books, of which 587 bore similar ratings.

Mr. Pease: You mean capital?

A 587 bore similar capital ratings, yes, sir.

Q Did you itemize the 587 names? A Yes, sir.

Q Give us the items. A Ratings similar as to capital, 232; reference ratings similar, 284; blank ratings, that is with no rating at all, 71.

Q What was the next state that you examined in both books? A The District of Manitoba, in Canada.

Q What was the result of your examination of that district? A Total number of names—

Q In what?. A In the book of the Lumbermen's Credit Association in Manitoba, 271, of these 29 were not car-
778 ried in R. G. Dun & Company's reference book, and of the 242 which were in both books 100 bore similar ratings.

Q Did you itemize the 100? Have you classified or itemized the 100 that bore similar ratings? A Yes, sir.

Q Give us the items? A Of these 100, 49 had similar capital ratings, 14 similar reference ratings and 37 blank ratings, that is, no rating at all as to capital.

Q What was the next state that you examined? A Mississippi.

Q What did you find as to that state? A The total number of names, 877 in the Lumbermen's Credit Association book, of these 364 were not carried in R. G. Dun & Company's book, and of the 503 that were carried in both books, 195 bore similar ratings.

Q Give us the items of the 195 bearing similar ratings?

A Ratings similar as to capital, 127; reference ratings similar, 20; blank ratings, 48.

Q What was the next state that you examined? A Alabama.

Q What did you find as to that state? A Total number of names in the Lumbermen's Credit Association book, 944; of these 378 are not carried in R. G. Dun & Company's book, and of the 566 which were in both books, 234 779 bore similar ratings.

Q Give us the items of the 234 which bore similar ratings? A Similar capital ratings, 150; similar reference ratings, 22; similar blank ratings, 62.

Q What was the next state you examined? A Montana.

Q What did you find as to that state? A The total number of names in the Lumbermen's Credit Association book, 172; of these 70 were not carried in R. G. Dun & Company's book, and of the 102 which were carried in both books, 45 bore similar ratings.

Q Did you itemize the 45 bearing similar ratings? A Yes, sir.

Q What are the items? A Ratings similar as to capital, 33; reference ratings similar, 7; blank ratings similar, 5.

Q What was the next state you examined? A Nevada.

Q What did you find as to that state? A Total number of names in the Lumbermen's Credit Association book, 19; of these 6 were not carried in R. G. Dun & Company's book, and of the 13 remaining, 5 bore similar ratings.

Q Have you itemized the five bearing similar ratings? A Yes, sir.

Q Give us the items. A Ratings similar as to capital, 4; reference ratings similar, 1. Blank ratings, none.

780 Q What was the next state you examined? A North Carolina.

Q What did you find as to that state? A Total number of names in the Lumbermen's Credit Association book, 1324, of these 573 were not carried in R. G. Dun & Company's book, and 751 are found in both books, of which 274 bore similar ratings.

Q What are the items of the 274 which bore similar ratings? A Ratings similar as to capital, 166; reference ratings similar, 41; blank ratings similar, 67.

Q What was the next state you examined? A Idaho.

Q What did you find as to that state? A Total number of names in the book of the Lumbermen's Credit Association,

213; not in R. G. Dun & Company's book, 99; in both books, 114, of which 31 bore similar ratings.

Q Give us the items of the 31 bearing similar ratings? A Ratings similar as to capital, 15; reference ratings similar, 3; blank ratings similar, 13.

Q What was the next state you examined? A Maine.

Q What did you find as to that state? A Total number of names in the book of the Lumbermen's Credit Association, 1519, of which 528 were not carried in R. G. Dun & Company's book. Of the 991 which were carried in both books, 532 bore similar ratings.

781 Q What are the items of the 332 bearing similar ratings? A Ratings similar as to capital, 239; reference ratings similar, 31; blank ratings similar, 62.

Q What was the next state you examined? A Utah.

Q What did you find as to that state? A Total number of names in the book of the Lumbermen's Credit Association, 193, of which 52 were not carried in R. G. Dun & Company's book; 141 in both books, of which 40 bore similar ratings.

Q Give us the items of the 40 bearing similar ratings? A Ratings similar as to capital, 32; reference ratings similar, 3; blank ratings similar, 5.

Q What was the next state you examined? A Florida.

Q What did you find as to that state? A The Total number of names in the book of the Lumbermen's Credit Association, 453, of which 167 were not carried in R. G. Dun & Company's book; in both books, 286, of which 113 bore similar ratings.

Q Give us the items of the 113 bearing similar ratings. Hereafter do it in every case without being asked. A Ratings similar as to capital, 46; reference ratings similar, 21; blank ratings similar 46.

Q What was the next state you examined? A Washington.

782 Q What did you find as to that state? A Total number of names in the book of the Lumbermen's Credit Association 986, of which 407 were not carried in R. G. Dun & Company's book. 579 appeared in both books, of which 221 bore similar ratings; 64 of these were ratings similar as to capital, 52 similar reference ratings, and 105 similar blank ratings.

Q What was the next state you examined? A Wyoming.

Q What did you find as to that? A Total number of names in the book of the Lumbermen's Credit Association, 54, of which 14 were not carried in R. G. Dun & Company's book; 40 in both books, of which 14 bore similar ratings; of these 10 bore similar capital ratings, 2 similar reference ratings and 2 similar blank ratings.

Q What was the next state you examined? A West Virginia.

Q What did you find as to that state? A Total number of names in the book of the Lumbermen's Credit Association, 881; not in R. G. Dun & Company's book, 444; in both books, 437; total ratings similar, 199, of which 140 were similar as to capital, 24 similar reference ratings and 35 similar blank ratings.

Q What was the next state you examined? A Wisconsin.

Q What did you find as to that state? A Total number of names, 1890, of which 399 did not appear in R. G. Dun & Company's book. In both books, 1491, of which 621 bore 783 similar ratings, 386 having similar capital ratings, 136 similar reference ratings, and 99 similar blank ratings.

Q What was the next state you examined? A Georgia.

Q What did you find as to that state? A Total number of names in the book of the Lumbermen's Credit Association, 1120, of which 468 were not carried in the book of R. G. Dun & Company; in both books, 652, of which 264 bore similar ratings; of these 145 bore similar capital ratings, 21 similar reference ratings, and 88 similar blank ratings.

Q What was the next state you examined? A Texas.

Q What did you find as to that state? A The total number of names in the book of the Lumbermen's Credit Association, 1245, of which 370 did not appear in R. G. Dun & Company's book; in both books, 875, of which 438 bore similar ratings; of these 199 bore similar capital ratings, 161 similar reference ratings, and 78 similar blank ratings.

Q What was the next state you examined? A Virginia.

Q You may go right on, Mr. Witness, and tell us all the states that you examined, and give us the results of your examination. A Virginia, total number of names in the Lumbermen's Credit Association book, 1136; not in R. G. Dun & Company's book, 443; number in both books, 693; total number of similar ratings, 249, of these 184 similar

n of re E.

capital ratings, 20 similar reference ratings and 45 similar blank ratings.

784 Vermont: Total names in the Lumbermen's Credit Association book, not in R. G. Dun & Company's book, 333; names in both books, 553, of which 158 bore similar ratings. Of these 110 bore similar capital ratings, 13 similar reference ratings and 35 similar blank ratings.

Tennessee: Total number of names in the Lumbermen's Credit Association book, 1352; not in R. G. Dun & Company's reference book, 631; names in both books, 721, of which 243 bore similar ratings, of these 143 were similar capital ratings and 35 similar reference ratings, 65 similar blank ratings.

Massachusetts: Total number of names 1690 in the book of the Lumbermen's Credit Association; not in R. G. Dun & Company's book, 471; names in both books, 1219, of which 484 bore similar ratings, 336 having capital ratings similar, 40 reference ratings similar, and 108 with blank ratings similar.

Connecticut: Total number of names in the Lumbermen's Credit Association book, 663; of which 163 were not in R. G. Dun & Company's book; names in both books, 500, of which 186 bore similar ratings; of these 144 bore similar capital ratings, 11 similar reference ratings and 31 similar blank ratings.

Delaware: Total number of names in the Lumbermen's Credit Association book, 179; not in R. G. Dun & Company's book, 42; in both books, 137, of which 49 bore similar ratings.

Of these 38 bore similar capital ratings, 2 similar refer-
785 ence ratings and 9 blank ratings similar.

Rhode Island: Total number of names in the book of the Lumbermen's Credit Association, 166; not in R. G. Dun & Company's book, 27; in both books, 139, of which 63 bore similar ratings; of these 46 bore similar capital ratings, 2 similar reference ratings and 15 similar blank ratings. That is twenty-five states that I have completed myself, personally. I have here a list of twenty-one states that myself and another clerk went through.

Q Give us the result of your examination of those states. A Arizona: Total number of names in the Lumbermen's Credit Association book, 64; of which 18 were not carried in R. G. Dun & Company's book; in both books, 46; similar ratings, 16. In these cases we didn't tabulate the results in detail, simply gave the total number of similar ratings.

Q Give us the rest of the states you examined. A Arkansas: Total number of names in the Lumbermen's Credit As-

sociation book, 1125; not in R. G. Dun & Company's book, 445; in both books, 680; similar ratings, 271.

California: Total number of names in the Lumbermen's Credit Association book, 1158; not in R. G. Dun & Company's book, 295; in both books, 863; similar ratings, 398.

Colorado: Total number of names in the Lumbermen's Credit Association book, 331; not in R. G. Dun & Company's book 93; in both books, 228; similar ratings 90.

786 District of Columbia: Number of names in the Lumbermen's Credit Association book, 48; not in R. G. Dun & Company's book 8; in both books, 40; similar ratings, 14.

Illinois: Total number of names in Lumbermen's Credit Association book, 2693; not in R. G. Dun & Company's book 410; in both books, 2283; similar ratings, 1011.

Indian Territory: Total number of names in Lumbermen's Credit Association book, 211; not in R. G. Dun & Company's book 72; in both books, 139; similar ratings, 76.

Iowa: Total number of names in Lumbermen's Credit Association book, 1791; not in R. G. Dun & Company's book 304; in both books, 1487; similar ratings, 891.

Kansas: Total number of names in Lumbermen's Credit Association book, 941; not in R. G. Dun & Company's book, 146; in both books, 795; similar ratings, 430.

Kentucky: Total number of names in Lumbermen's Credit Association book, 1274; not in R. G. Dun & Company's book 558; in both books, 716; similar ratings, 261.

Louisiana: Total number of names in Lumbermen's Credit Association book, 585; not in R. G. Dun & Company's book, 218; in both books, 367; similar ratings, 185.

Maryland: Total number of names in Lumbermen's Credit Association book 723; not in R. G. Dun & Company's book, 186; in both books, 597; similar ratings, 201.

787 Pennsylvania: Total number of names in Lumbermen's credit Association book 4217; not in R. G. Dun & Company's book 993; in both books, 3726; similar ratings, 1373.

Oregon: Total number of names in book of Lumbermen's Credit Association, 602; not in R. G. Dun & Company's book 262; in both books, 340; similar ratings, 119.

Oklahoma Territory: Total number of names in book of Lumbermen's Credit Association, 393; not in R. G. Dun & Company's book, 207; in both books, 186; similar ratings 101.

New Mexico: Total number of names in book of Lumber-

of E.

men's Credit Association, 71; not in R. G. Dun & Company's book, 26; in both books, 45; similar ratings, 20.

South Carolina: Total number of names in book of Lumbermen's Credit Association, 573; not in R. G. Dun & Company's book, 238; in both books, 335; similar ratings, 117.

South Dakota: Total number of names in book of Lumbermen's Credit Association, 401; not in R. G. Dun & Company's book, 99; in both books, 302; similar ratings, 175.

North Dakota: Total number of names in book of Lumbermen's Credit Association, 406; not in R. G. Dun & Company's book 93; in both books, 313; similar ratings, 192.

New Jersey: Total number of names in book of Lumbermen's Credit Association, 844; not in R. G. Dun & Company's book, 183; in both books, 661; similar ratings, 247.

788 New Hampshire: Total number of names in book of Lumbermen's Credit Association, 1141; not in R. G. Dun & Company's book, 402; in both books, 739; similar ratings, 240. That is all that we finished.

Q That is all, as far as you examined to date, is it? A Yes sir.

Taking of further testimony adjourned to Monday, November 3, 1902, at 2 o'clock P. M.

789 November 3, 1902
2 o'clock P. M.

Met pursuant to adjournment.
Present as before.

THEODORE E. STEIN recalled for further examination by Mr. O'Connor.

Q Mr. Stein, since you testified on Saturday, have you made any further comparison of the September, 1901 edition of R. G. Dun & Company's reference book, and the January, 1902 edition of the Lumbermen's Credit Association reference book? A Yes, sir.

Q What other states have you compared? A Ohio, Nebraska, New York and Missouri.

Q What did you find as to Ohio? A The total number of names carried in the reference book of the Lumbermen's Credit Association, 3115, of which 822 did not appear in R. G. Dun & Company's book; number of names in both books, 2293, of which 798 bore similar ratings.

Q What did you find as to Nebraska? A Total number of names in the book of the Lumbermen's Credit Association, 832, of which 140 did not appear in R. G. Dun & Company's book; number of names in both books, 692, of which 424 bore similar ratings. Shall I go on with the rest of them?

790 Q Yes, if you please. A New York: Total number of names in the book of the Lumbermen's Credit Association, 4914, of which 1158 do not appear in R. G. Dun & Company's book; number of names in both books, 3756, of which 1522 bore similar ratings. In the state of Missouri, total number of names in the book of the Lumbermen's Credit Association was 1685, of which 429 did not appear in R. G. Dun & Company's book; number of names in both books, 1256, of which 616 bore similar ratings.

Q That completes your examination, does it? A Yes, takes all the states in the book.

Counsel for the defendants agree that the books offered in evidence by the complainants, as Complainant's Exhibits 7, 8 and 9, October 31, 1902, are duplicate printed copies of the January, 1901, July, 1901 and January, 1902, editions of the reference book of the Lumbermen's Credit Association, and that the said editions were respectively issued to the subscribers of the said Lumbermen's Credit Association about the first days of the said months respectively and that the books which the witness, Theodore E. Stein examined as to the names to which he testified, are duplicate printed copies of the reference book of R. G. Dun & Company and the Lumbermen's Credit Association respectively, of the respective editions or dates of issue shown by his testimony.

791 *Cross-Examination.*

Mr. Atwood: These are the books you made the comparison from (indicating Complainant's Exhibits for identification 10 to 16)?

A They are.

Mr. Atwood: That is all of them?

A With the exception of these that have been introduced to-day.

Mr. Atwood: Except those last three?

A Yes.

By Mr. Pease:

Q How long have you been employed by R. G. Dun & Company? A Since November, 1897.

Q Continously? A No, sir.

Q How long were you in their employ continuously after that date? A Until April, 1898.

Q And when did you re-enter their employ? A In January, 1899.

Q And have you been there continuously since? A No, sir.

Q How long did you remain there immediately following the last date? A No, it wasn't January, 1899, it was in November of 1898.

Q How long did you remain there continuously after that date? A Until May, 1900.

792 Q And when did you re-enter their employ the third time? A In January, 1902.

Q You been there since? A Yes, sir.

Q By whom were you employed during those intervals? A In the first interval I was south, in the army.

Q The second interval? A I was employed by the Grand Rapids Herald Publishing Company.

Q And the last? A That is the second.

Q What were your duties during your employment with R. G. Dun & Company? A The usual office routine.

Q What did you do? A Answering reports.

Q Answering reports? A Answering inquiries for reports.

Q During all the time? A All the time that I have been in this office.

Q Did you do anything else? A Not in this office, no, sir.

Q What other office did you work in? A Grand Rapids, Michigan, office.

Q How long have you been in the Chicago office? A Since January, 1902.

Q Your previous experience with R. G. Dun & Company was where? A In Grand Rapids, Michigan.

Q And the only work you did prior to January, 1902, was answering reports? A Prior to that time?

793 Q Since that time? A For the firm in Grand Rapids?

Q No, for R. G. Dun & Company? A Practically, yes.

Q Well, actually? A All the work done by R. G. Dun & Company that I have done has been in the way of answering inquiries for reports.

Q Well, did you give your entire time to the employment of

R. G. Dun & Company in Grand Rapids? A Yes, sir, while I was employed by them.

Q What have you been doing for them since January, 1902? A The same work.

Q Anything else? A With the exception of the work I have been doing on these books.

Q When did you begin that work? A On the 30th of July.

Q Who, if any one, assisted you? A One clerk in the office, Mr. Hubal.

Q What is his name? A Hubal. Not at that time.

Q In what manner was this comparison conducted, how was the work done? A In the office of R. G. Dun & Company.

Q Well, I said how, just tell us how you did it? A I looked up the names that appeared in the book of the Lumbermen's Credit Association in the book of R. G. Dun & Company, and placed the rating—if the name appeared in the R. G. Dun & Company book I placed the rating which was the same in their rating after that which appeared in the book of the Lumbermen's Credit Association, when the state was finished
794 then went through and counted up the number of ratings that were similar.

Q Where did you place this rating? A Directly behind the name.

Q Well, I know, but in what? In or upon what, in the Dun book or the Credit book? A In the Lumbermen's Credit Association book.

Q In the book? A Yes, sir; that is, I did that with twenty-five states that I went through personally, without any assistance.

Q Then the ratings following the names in the Lumbermen's Credit Association January, 1902 edition of its reference book which you produced here on the date of your last examination, were made by you, were they? A Yes, sir.

Q By whom were these check marks in lead pencil, appearing in the column of blank spaces at the left of the names in this book made, referring to Complainant's Exhibit 9? A By myself.

Q What do they indicate? A That the name opposite to which they are placed bears a similar rating in both books.

Q In what manner are the names appearing in this book which do not appear in the Dun book, marked or identified? A With an "X" after the name.

Q That is in the first ruled column at the right of the

printed names in this book? A Yes, sir; in some cases
795 the columns aren't ruled.

Q Well, in all instances the "xs" appear at the right of the names, do they not? A Yes, sir.

Q And are in ink? A Yes, sir, and are in the first column where the columns are ruled; they are not always in ink.

Q Not always in ink. The letters and figures in ink at the right in the column, or appearing at the right of the printed names in this book, are the ratings given these same parties by R. G. Dun & Company? A Yes, sir.

Q In their September, 1901 reference book? A Yes, sir.

Q And the figures and numbers and characters, excepting the "xs" indicate R. G. Dun & Company's key, or are in the Dun key, are they not? A Certainly, they are the Dun ratings.

Q Well, it is the ratings expressed in the key used by R. G. Dun & Company? A That is the only way the rating could be expressed, yes.

Q What is the highest rating given,—highest capital rating given by R. G. Dun & Company as indicated by their key? A Two As.

Q How long has the present key of R. G. Dun & Company been in use by them? A I don't know.

Q And what is the next highest capital rating? A A plus.

796 Q And what does that indicate? A From $750,000 to one million dollars.

Q And what is the next highest capital rating given by R. G. Dun & Company? A A.

Q And what does that indicate? A From $500,000 to $750,000.

Q And what is the next highest capital rating given by R. G. Dun & Company? A B plus.

Q And what does that indicate? A Three hundred thousand to five hundred thousand.

Q What is the next highest capital rating given by R. G. Dun & Company? A B.

Q And what does that indicate? A $200,000 to $300,000.

Q What is the next highest capital rating given by R. G. Dun & Company? A C plus.

Q What does that indicate? A $125,000 to $200,000.

Q What are the credit ratings given by R. G. Dun & Com-

pany? A They very with the amount of capital represented.

Q I know, but in what terms are the credit ratings expressed? A With the exception of the first three ratings they are always expressed in numbers.

Q And what do the numbers indicate, that is what terms are used, Mr. Stein, to express or indicate the credit rating to a person as indicated by the key? A High, good, fair, and limited credit.

797

Q In what way is high credit indicated, that is, by what characters? A It varies with the amount of capital given in the rating.

Q The key of R. G. Dun & Company appears in the front part of the September, 1901 reference book of R. G. Dun & Company, does it? A Yes, sir.

Q In the comparisons to which you have testified, you did not take into account the credit ratings, did you? A No, sir.

Q And in your testimony with reference to similarity of ratings you referred only to capital ratings, is that right? A Yes, sir, I believe so stated in all cases.

Q You have before you the key of the Lumbermen's Credit Association, haven't you? A Copy of it, yes, sir.

Q And you had at the time you made these comparisons? A Yes, sir.

Q With what capital rating or ratings of R. G. Dun & Company did you compare the ratings given in the reference book of the Lumbermen's Credit Association as four As? A As being similar.

Q As being similar, yes— A With the ratings AA, A plus, A or B plus.

Q Is that all of the ratings, according to the Dun key which you compared as similar with the four As of the Lumbermen's Credit Association key? A Yes, sir.

798

Q Then in this comparison you put the AA, the A plus, the A and the B plus and the B? A Not B.

Q —and B plus, as equivalent to the four As in the Lumbermen's Credit Association rating? A Yes, sir.

Q Who instructed you to make the comparison in that manner, Mr. Stein? A Mr. Gallagher, the Chief Clerk of R. G. Dun & Company.

Q Did you talk with any one else in connection with this work? A Only as I was engaged upon it.

Q And with whom then? A With the men who worked with me afterwards.

Q Who worked with you? A Another clerk, Mr. Hubal.

Q Any one else? A And Mr. Gallagher and a Mr. Kramer.

Q Who is Mr. Kramer? A He is another clerk in the office.

Q Are these the only parties with whom you talked regarding this work? A Mr. O'Connor and Mr. Douglas, the Manager of the Agency.

Q When did you talk with Mr. O'Connor? A I don't recall the exact date.

Q Approximately, before or after you commenced the work? A After.

Q When did you talk with Mr. Douglas, before or 799 after? A After.

Q Now, with what rating of R. G. Dun & Company did you compare the three As of the Lumbermen's Credit Association key as being similar? A The B and the C plus rating.

Q And with what ratings of R. G. Dun & Company did you compare the AA of the Lumbermen's Association key as being similar? A Rating C.

Q Wherever you found a rating of AA in the Lumbermen's Credit Association book, and a C in R. G. Dun & Company's reference book, you counted them as similar, did you? A Yes, sir.

Q And when you found a rating of three As in the Lumbermen's Credit Association book and a C in R. G. Dun & Company's book, did you treat them as similar? A No, sir.

Q Why not? A Because the three A rating in the Lumbermen's Credit Association book stands for over one hundred thousand dollars, and the C rating in R. G. Dun & Company's book stands for only $75,000 to $125,000. I gave the Lumbermen's Credit Association the benefit of the doubt as to whether the capital rating was over or under $100,000.

Q The C, in R. G. Dun & Company's key would in some instances indicate the same as the three As in the Lumbermen's Credit Association key, would it not? A It would, I suppose.

Q Well, wouldn't it, without any suppose? A In some cases,—

800 Q Yes? A It would depend on the report.

Q Well, the subscribers using the book don't have access to the reports? A Whenever they want them.

Q Well, as a matter of fact they don't, do they, unless they call for them? A No, sir.

Q And in using the books they would,—and being guided by the key they might indicate and do indicate a capital rating of over $100,000,—the C does? A Yes, sir.

Q With what did you compare the B in the Lumbermen's Credit Association book, in R. G. Dun & Company's book as being similar? A The rating E.

Q Do they indicate the same capital rating? A Practically, yes, sir.

Q Well, no, actually? A No, sir.

Mr. O'Connor: Well, isn't that a matter for the Court to decide?

Q Now with what did you compare the C in the Lumbermen's Credit Association book, in R. G. Dun & Company's book as similar? A The F rating.

Q They are not the same, are they?

Mr. O'Connor: I object, because the keys speak for themselves.

A Practically yes, and actually, no.

Q Answer my question, Mr. Stein, directly. They are not the same, are they?

801 Mr. O'Connor: I object.

A No, sir.

Q In making this comparison with what did you compare the BC of the Lumbermen's Credit Association book, in R. G. Dun & Company's book, as being similar? A The F rating.

Q They are not the same, are they?

Mr. O'Connor: Objected to because the keys speak for themselves.

A The one includes the other.

Q Are they the same? A No, sir.

Q In making this comparison, with what did you compare the G in the Lumbermen's Credit Association book, in R. G. Dun & Company's book as being similar? A The L rating.

Q Are they the same? A I consider them the same.

Q Well, are they the same?

Mr. O'Connor: He has answered the question, Mr. Pease.

Q You say you consider them the same? A Yes, sir.

Q What does the G indicate in the Lumbermen's Credit Association key? A $500 to $1000.

Q And what does the L stand for in the Dun key? A Less than $1000.

Q In making this comparison with what did you compare the H in the Lumbermen's Credit Association book, in the R. G. Dun & Company book as being similar? A M rating.

802 Now what do you mean by similar, as used in your examination and in making these comparisons? A The capital rating is practically the same in both books.

Q What do you mean by practically the same? A That is, that it covers the same amounts expressed in different ratings.

Q When they don't cover the same amounts, as they do not in the majority of instances, what—

Mr. O'Connor: I object to the question as assuming that they don't in the majority of instances, when the fact is the converse.

Q Well, in many instances,—in some instances, what range of capital rating did you include within this term similar? A The range expressed by the—what I have just given you as to the way we compared them.

Q In some instances there is a difference of $5000, is there not? A Yes, sir.

Q And from that amount on up to a difference of $900,000, isn't there in some instances? A Depends on what the Lumbermen's Credit Association means by very high.

Q Well, what does it mean? A Can't tell, except that it is over $100,000.

Q How were you able to determine then whether the ratings were similar or not, if you don't know what the

803 very high rating as indicated by the four As of the Lumbermen's Credit Association key indicated? A I took one rating which was higher than $100,000 and allowed that much for the three A rating, everything above that I took to mean a four A rating.

Q Why did you do that? A Because that is what I understood by the four A rating in our book.

Q From whom did you understand that? A Common sense told me that.

Q Whose common sense? A My own.

Q That is all you had to go by, and all you did go by in making these comparisons as to similarity of rating of the four As in the Lumbermen's Credit Association book and the AA, the A plus, the A and the B plus in the Dun book, is that right? A Yes, sir.

Q The three As in the Lumbermen's Credit Association key might indicate in some instances the same capital rating as the C plus or the C in the Dun rating, might it not? A If it were taken in that way it would make the percentage of similar ratings larger.

Q Do you consider that an answer to my question?

Mr. O'Connor: I think it is fair.

A What was your question?

Question read.

A I believe I answered that question before.

Q Well, you didn't answer it this last time, did you?

804 A No, sir.

Q Will you be kind enough to do so? A In some cases, yes.

Q What do you mean, Mr. Stein, by similar reference ratings? A There are cases where a concern has headquarters in another town, both books refer to that town for a rating.

Q Well, in all cases where both books referred to another town as the headquarters of a concern, you called the ratings similar, did you? A Yes, sir, if they refer to the same town.

Q Where they refer to the same town? A Yes, sir.

Q For example, if a concern located in Chicago had a branch yard at Aurora, and both books under the name given in the book under Aurora referred to Chicago, or stated, "see Chicago" you called that a similar reference rating, did you? A Yes, sir.

Q Now in those instances did you,—or in those cases of similar reference ratings, did you in each instance make a comparison of the capital ratings given the concern at the headquarters or at the town where their headquarters were located and they were rated at that town? A I have compared the ratings on every name in the book, naturally I would have compared those also.

Question read.

A Not at the time that I prepared the reference ratings.

805 Q And if it happened in any case that the capital ratings given this concern at headquarters was the same,

you counted the capital rating as being similar? A Yes, sir.

Q And also the reference rating as being similar? A Yes, sir.

Q So that would be a double count? A If the name appeared twice. Q Take, for example, the case of the Crescent Sash & Door Company, manufacturers and wholesale sash, door and blinds, &c., in Wichita, Sedwick County, Kansas, in Complainant's Exhibit 9, how did you treat that? A In that case the name didn't appear in R. G. Dun & Company's book at all.

Q I am just asking you this as an example, Mr. Stein. Supposing it did appear in both books, how did you treat it? A With this—

Q Yes, with that "see Winfield". A I would mark an X in front of it as being similar rating.

Q Without looking at Winfield? A Certainly not, when I compared Winfield I should compare the headquarters.

Q Now, supposing that the capital ratings given under the name of Winfield were different, you would still count the reference rating as similar, would you? A Yes, sir.

Q Notwithstanding that the capital ratings given at 806 Winfield under the name of Winfield, were different?

A Certainly, that would only apply to the one name, Winfield.

Q Calling your attention to Darlington, E. R. & Company, lumber, under the town of Bloomington, McLean County, Illinois, and the parenthesis, purchasing department, St. Louis, Missouri, what did you do with that kind of an entry in this comparision, if anything? A The rating part?

A No, just using that for an example. A In case the same rating appeared?

Q No, without regard to the rating. Did you, in the case of a reference like this, purchasing department, St. Louis, Missouri, did you take any account of that, or count it similar? A If that same rating appeared in R. G. Dun & Company's book, I called it similar.

Q You didn't call it rating, you mean the reference? A Well, the reference, yes.

Q You counted it similar? A Yes, sir.

Q If R. G. Dun & Company reported a case like this as 'see St. Louis, Missouri", and the Lumbermen's Credit Association reported it as "purchasing department, St. Louis,

Missouri", did you count those as similar references? A Yes, sir.

Q Similar reference ratings? A Yes, sir

Q Did R. G. Dun & Company ever report concern in the lumber business showing a purchasing department?

807 A Not that I know of.

Q Well if they did you would know it, wouldn't you?

Mr. O'Connor: Objected to.

A Not necessarily.

Q In their book did you run across any such entries as that in making these comparisons? A I didn't run across any.

Q Then there are none, are there?

Mr. O'Connor: Objected to. He answered the question.

Q You examined the entire reference book did you, to compare it with the Lumbermen's Credit Association book? A I examined only the names which were in this book.

Mr. O'Connor: In which book?

A Book of the Lumbermen's Credit Association.

Q Then you took no note of the names of concerns in the lumber trade or kindred trades given in R. G. Dun & Company's book that were not in the Lumbermen's Credit Association book? A No, sir.

Q Paid no attention to those whatever? A No, sir.

Q There might have been a good many for all you know then? A A good many what?

Mr. O'Connor: I object to the question as calling for a mere conclusion.

Q Names of concerns in the lumber business reported in Dun's book which are not in this book? A There might have been, yes, sir.

808 Q Might have been 25 or 30 per cent more?

Mr. O'Connor: Objected to as calling for a conclusion.

Q For all you know? A I couldn't say as to the percentage.

Q For all you know? A For all I know.

Q Did you make any examination as to the classification of business in the two books? A No, sir.

Mr. O'Connor: What do you mean, Mr. Pease?

A Just what do you mean by that question?

Q Well, you examined the names and capital ratings did you not? A Yes, sir.

Q And that was all? A If the name appeared in any other line but the lumber trade or a kindred trade and it did not appear in that trade in R. G. Dun & Company's book, I counted it as not being similar; that is, supposing the name John Smith appeared in R. G. Dun & Company's book in the dry goods business, and appeared in this book of the Lumbermen's Credit Association in the lumber business or furniture manufacturing business, I wouldn't count those as being similar ratings. I would check the name off in the book of the Lumbermen's Credit Association as not being in R. G. Dun & Company's book. As far as the different lines of lumber industry, that is whether they were manufacturers of sash, door and blinds or wooden ware or something like that, I didn't verify them exactly, but made sure that they were all in
809 the lumber trade or in a kindred line.

Q Well, you did not in all instances make a careful comparison of the classification of business, did you?

Mr. O'Connor: I object, because the witness has clearly stated what he did do.

A That is a general instance, I took that as an example.

Mr. O'Connor: What do you mean, Mr. Pease, I don't understand you myself, by making a classification of the business?

Mr. Pease: I think the witness understands.

Q Don't you understand it? A I understand it if you mean it the way I understand it.

Q Well, you answer it the way you understand it.

Question read.

A I made sure that they were in the lumber trade or kindred interest, that is, lumber saw mill, &c.

Q And you mean to say that you treated them the same if a man was reported in one book as being in the saw mill business and in the other book as being in the lumber business? A Yes, sir.

Q You treated them the same? A Yes, sir.

Q And included them in the computations which you made as to the similar capital ratings? A Yes, sir.

Q And is that true of furniture manufacturers? A I don't remember any cases coming up like that.

810 Q Well, if there were such cases? A But if I was positive in my own mind that it was meant for the same man and the rating was the same, I called it the same.

Q No matter if there was a different classification of business, is that right?

Mr. O'Connor: I object because the witness has stated, as I understand him, that he didn't find any such cases.

A With that understanding that it was in the lumber trade, that is, in the lumber business of some kind.

Q In any of the different branches of the lumber trade? A Yes, that is it.

Q And is that true of lumber users? A Lumber consumers, yes.

Q Lumber consumers? A Yes.

Q In case the Lumbermen's Credit Association reported a man as being in the lumber business, and R. G. Dun & Company reported the same man as being in the furniture manufacturing business and the capital ratings were similar, did you include that case? A I don't believe I ran across any cases of that kind.

Q You stated in your direct examination that R. G. Dun & Company did not carry in their reference book the names of concerns in the lumber business who did not carry a stock of lumber— A I don't believe I said that. I may have said as a rule they don't.

811 Q Well you stated, did you not, that lumber brokers and commission men were not carried in R. G. Dun & Company's book? A Not as a rule, I believe.

Q You do not? A I do not believe they do.

Q Don't you know that there are thousands of such concerns reported in R. G. Dun & Company's book? A I suppose there are, but—

Q Yes, sir, and don't you know that at least two thirds, if not more of the concerns reported in the east, like New York City and Boston, Philadelphia, Baltimore and other large cities throughout the east do not carry stock? A I don't know that.

Q You don't know that? A No, sir.

Q It may be a fact then? A For all I know.

Q Don't you know as a matter of fact that more than one half of the concerns carried by R. G. Dun & Company and reported as in the lumber business, do not carry stocks in these eastern cities? A I don't know that.

Q As a matter of fact you don't know anything about it, do you, whether they do or do not carry— A Stock? Whether they do or do not carry stock?

Q No, whether Dun & Company does or does not carry names of concerns in the lumber business who carry no stock? A That has always been my impression, that they did not.

812 Q I am asking you for what you know, Mr. Stein.

Mr. O'Connor: He can receive his knowledge only from his experience in the business, Mr. Pease.

Mr. Pease: Let him answer the question as to what he knows about it.

Mr. O'Connor: I object because the witness has already answered the question.

A I would like to say just there that different offices have different rules as to what names they carry in the books, in their district, and as to any other office outside of Grand Rapids or Chicago I wouldn't know.

Q Do C. S. Bacon & Company of Grand Rapids, carry a stock? A I don't know.

Q Do the Barrett Company of Grand Rapids, carry a stock of lumber? A I don't know.

Q Do the Clark, Jackson Lumber Company of Grand Rapids carry a stock? A I couldn't say with reference to any firm.

Q You mean you don't know whether they do or not carry a stock? A No, sir, I do not.

Q R. G. Dun & Company carry some of these names, do they not? A I believe they do.

Q Your impression which you stated with reference to this is based upon your experience in Grand Rapids, is it? A Yes, sir.

Q As a matter of fact, you have no personal knowl-
813 edge as to whether the names of dealers not carrying stocks are reported in R. G. Dun & Company's book or not, have you?

Mr. O'Connor: Objected to because the witness has already answered.

Q I believe I have answered that as fully as I can.

Q Have you made any computation as to the total number of names—total of the names given by you in these different comparisons? A By states, yes, sir.

Q No, but I mean as a total? A The entire number?

Q Yes. A No, sir. I believe I compared them all.

Q What classifications does R. G. Dun & Company make in their book of concerns in the different branches of the lum-

ber business or manufacturers using lumber? A I don't quite understand the question.

Mr. Pease: Read the question.

Question read.

Mr. O'Connor: Objected to, the books will speak for themselves.

A You mean the way they are carried in the book, their line of trade?

Q Yes. A Why, they carry a great number of different—

Q No, just the different classifications? A I couldn't repeat them all.

Q In the lumber trade, I don't mean generally, just
814 in the lumber and kindred trades and lumber consumers, how are they classified by Dun? A Well, there are quite a number of them.

Q How many? A I couldn't say, I haven't looked that up specially; and they may carry, outside of that they may carry quite a number of special lines that use lumber in different ways.

Q Well, what classifications do they make, that is what I want to know. A I couldn't say without looking the matter up specially.

Q How long were you in doing this work, Mr. Stein? A About five or six weeks, I should say.

Q Did you work nights any? A Only for the last few days.

Q Did you keep any memoranda or record of your work outside of the books? A Yes, sir.

Q Where is that memoranda? A I have it with me.

Q And that is what you testified from? A Yes, sir.

Q Did you keep any record or memorandum aside from that? A Outside of the book you mean?

Q Outside of the memorandum from which you have testified here? A Outside of that and the memoranda which I have made in the book, none.

Q Referring to Complainant's Exhibit 9; did you do the comparing in this book from the page headed "Carbon-
815 dale, Jackson County, Illinois", to the page headed "Maine"? A I believe I have stated—

Q Well, but looking at the book— A —that was done by myself and another clerk, the one that I referred to.

Q This contains all the memoranda which you made of

that comparison? A Outside of the results which I have with me.

Q Well, what do those results show?

Mr. O'Connor: He read them to us, didn't he?

A Results are practically what are in the—(Witness produces pocket memorandum book).

Q The only memoranda in this book are the names of the states and the figures indicating the numbers of names and similar ratings which you testified to, is it not? A It is practically what I have read into the record here.

Q It is a copy of what you have read into the record? A Yes, sir.

Q Now the only thing that appears in—the only memoranda appearing on the pages to which your attention has been called in Complainant's Exhibit 9, are a number of checks in lead pencil opposite certain names, is that right? A Yes, sir.

Q Just how was this work done, and these checks made, Mr. Stein? A In all cases where the ratings aren't
816 written in the book in ink, one clerk read off the names and the other checked them whether they were similar or not by comparing them with the ratings read off the name and the rating.

Q Did you do the checking in this instance, as to these pages? A I couldn't say, there were two of us working together, he may have done some of the checking and I may have done some of the checking; may have both checked in the pages included here. I compared the ratings in each case.

Q Either you or your assistant read the names from Dun's book, is that right? A Read the names from this book, (referring to Lumbermen's Credit Association book).

Q And when a name with a similar rating was found, a check mark was made? A Before the name in the Lumbermen's Credit Association book.

Q This red book (indicating)? A Yes, sir.

Q From which book was the reading done? A From the book of the Lumbermen's Credit Association.

Q And the checking was also done in that book? A Yes, sir.

Q And in what manner was the similarity of rating with the Dun book determined? A I believe I have given you a comparison of keys.

Q No, but I want the modus operandi of the operation. A I had a—

Q Well, how did you know, or how did the reader 817 know when to check in this book? A By having the similar rating read to him.

Q I thought you said the reading was done from the Lumbermen's Credit Association book? A Certainly, if the rating was found similar in the other book he checked it in this book, but an "X" before the name.

Q How was that determined, whether the rating was similar or not, when two of you worked at it?

Mr. O'Connor: Counsel wants to know how you and the other man worked together?

Q You say you read from the Lumbermen's Credit Association book sometimes and sometimes your assistant read from it? A Yes, but in each case I compared the ratings.

Q Now what do you mean by that? A That is, in the case where I read from the book he would give me a rating in R. G. Dun & Company's book, I would compare that by comparing it with the rating in the Lumbermen's Association book, if it was similar I would check this.

Q How would you compare it from his reading? A From his reading, yes, sir.

Q You don't know whether he read right or not, do you?

Mr. O'Connor: Mr. Pease, let me ask you—

Mr. Pease: Let him answer that question, don't interrupt.

A Of course that is—I couldn't swear as to that myself. I can swear personally as to the 25 states that have their ratings written in there in ink, that I have done 818 myself personally.

Q In what manner did you do that,—did you make those comparisons as to those 25 states? A I explained that to you yesterday, I believe.

Q I don't remember. A Or not yesterday, Saturday.

Q I don't think you did. A By looking up the name in the book of R. G. Dun & Company, if the ratings were similar checking the name with an "X".

Q The 25 states which you compared personally, you put the ratings in ink of R. G. Dun & Company down in the book of the Lumbermen's Credit Association, did you? A Yes, sir.

Q In some instances there are ratings given here in ink and in other instances there is a cross opposite certain names;

what do they indicate respectively? A I gave you all that Saturday. That indicates that the name is not in R. G. Dun & Company's book, where the cross is behind the name.

Q I am speaking of the cross at the right of the names? A That is the one, they do not appear in Dun & Company's book.

Q And what are these ratings in here (indicating)? A Those are the ratings which do appear in Dun & Company's book.

819 Q Which of these ratings did you count as similar? Taking the page headed "Colorado, Independence, Teller County", in Complainant's Exhibit 9? A Those marked with an "X" before the name.

Q In pencil? A In pencil.

Q And the left hand side of the page? A Before the name, that would mean the left hand side of the page.

Q When you made these check marks in pencil indicating a similarity of rating, did you have the book of R. G. Dun & Company before you? A Yes, sir.

Q Did you compare the ratings in this book with the ratings in Dun's book at that time? A Yes, sir.

Q And as you checked them? A Yes, sir. Just repeat that question please?

Question read.

A Not at the time that I wrote them in, but at the time that I finished a state I went back and compared the ratings. That is, I didn't compare each name at the time I placed the rating in the book, but I put all the ratings in the book behind each name as far as they were carried, then went back through the state and compared them according to the key, checked those which were similar.

Q Didn't you check from this book, and the ratings which you had transferred from R. G. Dun & Company's book
820 into this book? A You mean with reference to these checks here?

Q Yes, and with reference to the ratings here. A To the ratings, yes, sir.

Q Then this comparison, or the comparison which you made of the ratings in this book, Complainant's Exhibit 9, was with the ratings which you had transferred from R. G. Dun & Company's book into this book? A Yes, sir.

Q In all cases? A Yes, sir.

Mr. O'Connor: So far as you transferred ratings into the book?

A Yes.

Q As to those 25 states? A Yes.

Q Do these check marks in pencil in this book in the cases where there was no rating from R. G. Dun's book transferred into this book indicate the same as the check marks in the cases where the ratings were transferred? A Yes, sir.

Q Were the names of the concerns and the towns spelled alike in both books? A With a few exceptions, yes, sir.

Q Did you compare in each instance the spelling? A Yes, sir.

Q Of the names of all the concerns and towns? A Yes, sir.

Q But you didn't compare the classifications of business? A No further than I have mentioned already.

Q Did you spell out the different classifications of business,—did you notice the spellings and abbreviations to
821 see whether they were the same or not? A I don't believe I did, not spelling them out. I don't know what you mean by that exactly.

Q I mean spelling the different names and towns as they appeared here in your comparisons, did you do that? A This is all with reference to the work I did myself?

Q No, the work that you were assisted in? A In that case where there was any doubt at all as to the spelling of a name, one of us asked the other exactly as to the spelling in the larger towns we did that almost all the way through so as to make sure, in the smaller towns we could tell in a minute whether the name was there or not without asking for the spelling.

Q In what cases was there doubt in your mind as to the spelling? A Cases of names in St. Louis.

Q What name in St. Louis? A O, St. Louis and New York City.

Q Give us the names in St. Louis. A Don't remember any cases exactly, but there were a good many of them.

Q Give us the names in New York City. A I am simply referring to them as cases where we did do that, I can't remember any particular instance. In cases where the rating was found—this is just an example—if the name was Jones and Smith and we had any doubt, there being so many

Joneses in the book, any doubt as to the way the name
822 was spelled, one would ask the other to make sure the spelling was Jones or whatever it was, where there was only one Jones and Smith in the town we didn't do that.

Q Then the man reading did not spell out the names unless he was interrupted by the person that was checking? A No, sir, except in cases where he wanted to assist him without the other man's asking him.

Q You have testified here as to certain specific names, as to the spelling of certain specific names, in your first examination. A Yes, sir.

Q You refer to those as the names which you were particular about in the spelling, don't you? A No, those had nothing to do with this examination at all.

Q What do you mean by blank ratings? A Those in which no capital rating appeared.

Q You have stated you paid no attention to the credit ratings? A No.

Q Did R. G. Dun & Company carry many blank ratings? A Carry quite a few, I couldn't state as to the numbers.

Q Comparatively a small number is it not? A A Comparatively small number.

Q As compared to the whole number of ratings? A Yes, sir.

Mr. O'Connor: Very small proportion I suppose, isn't it?

A It is quite small, yes.

Q Well, R. G. Dun & Company in their reference book
823 consider or treat a credit rating as a rating, don't they?

A Not as a capital rating.

Q No, but as a rating? A As a rating.

Q For instance, if a man was given a credit rating but no capital rating, you wouldn't count him as a blank rating? A No, I wouldn't say blank wherever a credit rating is.

Q I mean in referring to your blank ratings, or to the blank ratings?

Mr. O'Connor: Aren't you calling for what will be shown by the books themselves? Wont the Court see for himself?

Q Where R. G. Dun & Company had no capital rating, but a credit rating, and the Lumbermen's Credit Association had no capital rating, or pay rating, how did you consider or treat them in those cases in this comparison? A I was simply comparing them as to the capital ratings.

Q You took no account whatever of the credit ratings?

A Called it a blank capital rating if there is no capital rating given, as far as the capital rating is concerned they are alike, similar.

Q And you treated them in those instances as similar? A Yes, sir.

Q And they are included in your number or count, or number of these similar capital ratings? A In the first 25 states I have given they are designated as similar.

824 Q Well, I say, they are included in that number? A They are included in the total.

Q Notwithstanding the fact that R. G. Dun & Company did give the parties a credit rating? A The ratings are similar as to capital.

Mr. O'Connor: I understand the witness to say that he has made comparison only as to capital ratings—he compared only as to capital ratings, am I right Mr. Witness?

A Yes, sir.

Q How did you treat in this comparison, the ratings in the Lumbermen's Credit Association book indicated by 100? A As a blank rating, no capital rating given.

Q You treated it as a blank rating? A As having no capital rating given, yes, sir.

Q Were you aware of the rating indicated by the Lumbermen's Credit Association key, 100? A Yes, sir, by referring to the front of the book I saw what it meant.

Q You haven't it on the key? A No.

Q Which you used in this comparison, have you? A No, sir.

Q And you did not then take that rating into account? A No, sir, I didn't consider it a rating at all, that is as far as it referred to capital.

Q Mr. Stein, supposing a man is reported as worth $5000, how is he rated in Dun's book? A You mean that is his net worth?

825 Q Yes.

Mr. O'Connor: Objected to as immaterial and not proper cross examination.

A I should think that he would be rated—

Mr. O'Connor: I object unless the witness speaks of his own knowledge, if he knows how Dun & Company rate him.

Q You had charge of the Grand Rapids office, didn't you? A No, sir.

Q Well, go ahead, tell me how is a man worth $5000,—how is he rated? A I should think he would be rated—

Mr. O'Connor: If you know, Mr. Witness, not what you think, what you know.

Q Let him state. A I don't know myself personally, of course, because I have never done any rating. I should think he would be rated as being worth $5000.

Q What letter of the key would you use?

Mr. O'Conor: I object, as the witness says he doesn't know.

Q Of R. G. Dun & Company's key? A If the man was rated at $5000, would use the lowest letter, which would indicate $5000, that is the letter "H".

Q That would be from three to five thousand? A Yes, sir.

Q Supposing he was worth $7000?

826 Mr. O'Connor: I object because the witness isn't speaking of his own knowledge, and because the key will speak for itself.

Mr. Pease: He doubtless knows the custom and rule of the office.

A As far as that is concerned, I do not, I never have been employed in that capacity in this office.

Q Did you do any rating in Grand Rapids? A No, sir.

Q Upon what is the credit rating indicated by R. G. Dun & Company's key based?

Mr. Hoyne: If you know.

Mr. O'Connor: Is it fair to assume that he knows in your question, without asking him if he does know; he has told you several times he has never done rating.

Mr. Pease: If he doesn't know I presume he wont tell us; it is fair to assume that isn't it?

A I couldn't say with any degree of positiveness.

Q By whom were these reference books of the Lumbermen's Credit Association which you have examined, given to you? A The first book, of the January, 1902 book was handed me by Mr. Gallagher, clerk in our office.

Q When? A At the time when I began my work.

Q When was that? A I stated already.

Q July. A Do you want the date again?

Q Yes. A July 30.

827 Q And where did he get it?

Mr. O'Conor: I object.

A I don't know.

Q By whom were the other books given you?

Mr. O'Connor: Objected to as immaterial.

A I saw them in the office of Hoyne, O'Connor & Hoyne.

Q First. Is that where you first saw them? A Yes, sir.

Q When? A I can give you the exact date, I believe.

Mr. O'Connor: O, tell about when.

A It was about the 21st of October, I haven't the exact date,—within a couple of days.

Q Of this year? A Yes, sir.

Q Do you know any one connected with the Foster Lumber Mercantile Agency?

Mr. O'Connor: Objected to as immaterial and not proper cross examination.

A No, sir.

Q Do you know Mr. Fish? A No, sir.

Q Know W. A. Glass?

Mr. O'Connor: Same objection.

A No, sir.

Q You know that there is no credit rating indicated by the key used by the Lumbermen's Credit Association, don't you?

Mr. O'Connor: I object to it because the key of the
828 Lumbermen's Credit Association will speak for itself, it being in each book offered in evidence.

A I don't know that, no, it has what I consider a credit rating key.

Q You mean it has a pay rating? A Yes, sir.

Mr. O'Connor: Objected to as calling for a conclusion; the key will speak for itself.

Q Don't you consider there is a difference between a credit rating and a pay rating?

Mr. O'Connor: Objected to as immaterial, calling for a conclusion.

A Uused in the way they are used, I don't consider them as different; it is only my own opinion.

Q The credit rating of Dun & Company is based upon the capital rating is it not, entirely? A I don't believe it is.

Q Do you know? A No, sir.

Q Doesn't the key indicate and show that?

Mr. O'Connor: I object to it because if the key shows it the key is the best evidence.

Mr. Pease: See how well informed this young man is to make these comparisons. Answer the question.

Question read.

A I don't think it does.

Adjourned to Tuesday, November 4, 1902, at 10 o'clock A. M.

829 November 4, 1902.
10 o'clock A. M.

Met pursuant to adjournment.
Present as before.

THEODORE E. STEIN.

Cross Examination continued by Mr. Pease.

Q Mr. Stein, about how many of the ratings which you testified to as being similar, were included in Dun's ratings of AA, A plus, A, and B plus? A That is over a hundred thousand dollars?

Q Yes. That is, which you treated as similer with the Lumbermen's Credit Association? A I should think about five to ten per cent.

Q What do you base that on? A My recollection as to the number of times those ratings appeared.

Q Did you make any memorandum of those instances? A Not specially, no, sir.

Q Did you have it in mind specially when you did the work? A I don't think so, no.

Q Might be very much larger percentage, for all you know?

Mr. O'Connor: Object to the question as calling for a mere conclusion.

A No, sir, I don't think so.

830 *Re-Direct Examination by Mr. O'Connor.*

Q Where is R. G. Dun & Company's principal office located? A In New York City, I believe.

Q You said that you did twenty-five states,—compared twenty-five states alone? A Yes, sir.

Q The twenty-five states which you did alone you specified in your direct examination, did you? A Yes, sir.

Q Where did you say you first saw this January, 1902 copy of the reference book of the Lumbermen's Credit Asso-

ciation? A I said that I saw it in the office of R. G. Dun & Company, but I think I was mistaken.

Q I understood you to say that it was handed to you by Mr. Gallagher? A Yes, sir.

Q Have you refreshed your recollection as to the circumstances under which you first saw it? A Yes, sir, I have.

Q What is your recollection now as to the occasion when you first saw it? A That I got the copy from yourself.

Q Where? A In your office.

Q That was the first time you ever saw it, was it? A Yes, sir.

Q When I handed it to you did it have any mar ed ratings in it? A Yes, sir.

831 Q What? A I don't remember the exact states that were marked, but there were a number of them that had the ratings already in the book.

Q In what form? A Written in ink.

Q Look over the book and see if you can find any of the ratings that are not in your hand writing, that is, that were in the book when I handed it to you? A Yes, sir, the first part of the book was finished as far as the city of Chicago, Illinois, that is, the ratings were all in.

Q As far as the city of Chicago? A Yes, sir. Besides that the states of Ohio, Pennsylvania and New York with the exception of New York City, were already in the book.

Q Did you go over the work that was already in the book?

Mr. Pease: Objected to as leading.

Q What did you do with respect to the states which you found already marked in the book when it was handed to you? A Why those that I compared personally, compared the ratings with those in the book to see that they were correct, that is, verify them.

Q The ratings already in the book? A Yes, sir; if there were any changes or corrections to make I made them.

832 Q What was done with reference to the other ratings that you did not do alone, the ratings I mean that were already in the book when I handed it to you? A We took those for granted and checked them off.

Q Didn't you compare them with the original?

Mr. Pease: Objected to as leading.

A No, sir.

Q Find a page. I don't think you understand my question, Mr. Stein. Find a page which you didn't do alone. A This page in New York (indicating).

Q What page? A The page headed "Buffalo".

Q I notice two columns of ratings on that page, in which column are the ratings of R. G. Dun & Company? A In the left hand column after the name.

Q That is, in the first of the two columns containing the written ratings? A Yes, sir.

Q What did you do with reference to those ratings, R. G. Dun & Company's ratings on that page? A Compared them with the rating in the—the printed rating in the book.

Q Well, that is what I asked you a moment ago. I understood you to say a moment ago that you didn't compare them. A We did compare them, yes, sir.

Q Did you compare all of R. G. Dun & Company's written ratings in that book, all the ratings that were in it at the time I handed it to you, all of R. G. Dun & Company's ratings?

Mr. Pease: Objected to as leading.

A Yes, sir.

Mr. Pease: I move to strike out the answer.

833 Q With what did you compare them? I am now referring to R. G. Dun & Company's ratings alone,—

Mr. Pease: Objected to as leading.

Q —that were written in that book when I handed it to you, what did you do with them? A I compared them with the printed rating in the book.

Q In what book? A In the book of the Lumbermen's Credit Association, January, 1902.

Q The book that you now have in your hand is the January, 1902 edition of the Lumbermen's Credit Association, isn't it? A Yes, sir.

Q You say that you compared those ratings, R. G. Dun & Company's ratings in that book, that were in that book at the time I handed it to you? A Yes, sir.

Q With what did you compare those ratings? A Only with those in this book (indicating Exhibit 9.)

Q I am asking you with—Oh,— A Simply compared them in this way.

Q Well, did you verify R. G. Dun & Company's ratings in that book?

Mr. Pease: Objected to as leading.

A In only certain states, only in those states that I did alone.

Q Did you and the young man who worked with you compare or verify R. G. Dun & Company's ratings in the states that you did together, with R. G. Dun & Company's ratings in R. G. Dun & Company's book?

834 Mr. Pease: Objected to as leading.

A Only in cases where the ratings were not already written in the book.

Q You stated yesterday that "G" in the key of the Lumbermen's Credit Association was equivalent to "L" in the key of R. G. Dun & Company. A I considered it so, yes, sir.

Q Why?

Mr. Pease: Objected to as leading; shows for itself.

A Because the rating of R. G. Dun & Company is given as less than $1000, but there is a rating of less than $500, so reasonably—

Q What is the rating of less than $500? A "M".

Q So that if the rating fell below $500 it would fall under what letter? A "M".

Q Then to fall under the letter "L" it must be between $500 and $1000? A Yes, sir.

Q How did you and the young man work together in making the comparison? A One of us would call off the name in the book of the Lumbermen's Credit Association, and the other would look it up in R. G. Dun & Company's book, giving the rating.

Q Who would give the rating? A The one who looked it up in R. G. Dun & Company's book.

Q He would call off the rating that appeared in R. G. Dun & Company's book?

835 Mr. Pease: Objected to as leading.

A Yes, sir.

Mr. Pease: Don't lead your witness, O'Connor.

Q And what would the other person do? A He would check the name if it had a similar rating, or if it did not appear in the book of R. G. Dun & Company, in other cases he wouldn't do anything with it.

Q It was checked by the marks that you have explained? A Yes, sir.

Q When you called off the names and ratings from R. G. Dun & Company's book, did you call them off correctly?

Mr. Pease: Objected to as leading.

A Yes, sir.

Q When you called them off from the book of the Lumbermen's Credit Association did you call them off correctly?

Mr. Pease: Objected to as leading.

A Yes, sir, to the best of my knowledge and belief.

Q You were asked about the classification of business of the persons whose names you examined; how did that appear, how did the classifications appear in the two books as to similarity of business? A The business was similar as far as it pertained to the lumber trade; that is, it was either in the lumber business or some kindred interest.

Q It appeared so in both books, did it?

Mr. Pease: Objected to as leading.

A Yes, sir.

836 Q Did it appear so in both books or not?

Mr. Pease: Same objection.

A It did.

Re-Cross Examination by Mr. Pease.

Q How do you know the principal office of R. G. Dun & Company is in New York? A I stated I believed it was there.

Q Why do you believe it is there? A Because I have seen illustrations of the head office of R. G. Dun & Company located in New York City.

Q Were you ever told that it was there? A Yes, sir.

Q Have you ever been there yourself? A No, sir.

Q Then all you know about it is what you have been told? A What I have been told and what I have seen.

Q Or have seen in printed and published matter? A Yes, sir.

Q And your testimony is based on that? A As far as the location of the head office is concerned.

Mr. Pease I move to strike out the witness' testimony on that point.

Mr. O'Connor: Let me ask him a question on another matter before I forget it?

Mr. Pease: Yes.

837 Q (Mr. O'Connor) You have testified that you first saw the January, 1902 copy of the Lumbermen's Credit Association reference book in my office; where did you

first see the other books that have been used in evidence and that you examined? Deposit Theod Stein

A In your office.

Q I mean the books of the Lumbermen's Credit Association. A Yes, in your office.

Mr. O'Connor: That is all.

By Mr. Pease:

Q With whom have you talked since you left the witness chair last evening regarding this matter, this case,—regarding your testimony in this case? A Regarding my testimony?

Q Yes? A With Mr. O'Connor I guess is all.

Q With any one else? A Simply to say last night to the chief clerk that these other men would be required here this morning.

Q And the only other person with whom you have talked regarding your testimony is Mr. O'Connor? A Yes, sir.

Q Now, what occurred to refresh your recollection with reference to where you first saw this book, Complainant's Exhibit 9? A Mr. O'Connor brought several points that made me remember that Mr. Gallagher had not given it to me. I was under the impression that Mr. Gallagher had handed it to me because he came to me first and asked me to do the work.

838 Q Then in your previous examination you have testified with reference to your impressions, have you?

Mr. O'Connor: I object.

A I testified to what at that time I thought was correct.

Q And that was in some instances based on mere impressions?

Mr. O'Connor: I object to the question as improper.

Q Is that right? A I hardly know what you mean by impressions.

Q Well, what do you mean by impressions? A I didn't say impression, did I?

Q Yes, sir, you first used the term. Now what do you mean by impressions? A Well, what I thought.

Q Now what points did Mr. O'Connor mention which served to refresh your recollection to the extent of convincing you that your statements yesterday were incorrect, with reference to when you first saw, and from whom you received this book, Complainant's Exhibit 9? A I don't exactly remember the conversation.

Q Well, you stated that Mr. O'Connor mentioned several

points which served to refresh your recollection to that extent. Now what were the points that Mr. O'Connor mentioned? A Well, he asked me if I was positive that Mr. Gallagher handed me the book. I was not.

Q And what else? A And on thinking the matter
839 over I remembered that Mr. Gallagher had simply spoken to me in connection with beginning the work and that I had gone to Mr. O'Connor's office to get the book to do the work.

Q Was that the only point that Mr. O'Connor mentioned in his conversation with you in reference to this book? A He mentioned the fact that at the time he handed me the book, he spoke of the written ratings which were already in the book, which I remembered as his speaking about at the time he gave it to me.

Q Anything else? A And he told me at the same time in those cases where I used those ratings—

Q No, I am asking you now what Mr. O'Connor said last night or this morning? A He asked me if I didn't remember that.

Q Then you were entirely mistaken in your testimony as to when you first saw and from whom you received this book? A As far as my getting the book is concerned, yes, I was mistaken. It was a small matter and one that I—

Q You testified, did you not, on your previous examinations in this case that you personally made the ratings in ink which appear in this book, Complainant's Exhibit 9, did you not? A Yes, sir, as far as those 25 states were concerned that I finished.

Q And you were mistaken with reference to that also, were you? A No, sir.

840 Q Didn't you just say this morning that you did not transfer into this book, Complainant's Exhibit 9, the ratings which appear in ink following the names, certain names? A In those cases I verified the names.

Q Now, Mr. Stein, I want you to answer by questions and not give me any general information.

Mr. Pease: Read the question.

Question read.

Q Wasn't that your statement? A Yesterday?

Q No, this morning? A Not with regard to all the names, no, sir.

Q Didn't you testify yesterday, or at the time before

when you were on the stand, that you made all of these ratings in ink which are in this book Exhibit 9? A I don't recollect testifying to that effect.

Q If you did so testify you were mistaken? A Yes, sir.

Q Now just which of the ratings in ink, appearing in this book, Complainant's Exhibit 9, did you make personally? A I can tell by reference to the book. Witness looks at book) The ratings in the states of Maine, Massachusetts, Michigan, Nevada, North Carolina, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming and the District of Manitoba.

Q Are these all of the ratings which appear in ink
841 in this book which you put in there yourself? A Except those that I may have corrected in the states that I verified.

Q Now who put in those other ratings? A I don't know.

Q The other ratings appearing in this book? You don't know? A I don't know, no, sir.

Q They were in there when the book was handed to you? A Yes, sir.

Q What rating appears in the second column in the states which you did not rate? A I don't know.

Q Is it Bradstreet's rating? A I don't know.

Q You don't know? A No, sir.

Q Do you know Bradstreet's key? A No, sir.

Q Did you transfer into this book any other ratings than Dun's ratings? A No, sir.

Q Were you not told by any one what the ratings in the second columns were? A No, sir.

Q Never asked? A No, sir, I had nothing to do with them whatever.

Q As to the states which you transferred the Dun rating into this book, will you please explain just the manner in which you made the comparisons and did the work?

Mr. O'Connor: Objected to because the witness has explained it several times.

A I believe I explained that yesterday.

842 Question read.

A I looked up the name—

Q No, I don't want that. Well, go ahead. A Looked up the name appearing in the book of the Lumbermen's Credit Association in the R. G. Dun & Company book, and placed

the rating directly in the Dun book directly after the name in the book of the Lumbermen's Credit Association in ink.

Q Do you know how many names there are in these states in which you did that? A I have counted them, yes, sir.

Q I mean altogether, did you calculate them, the total? A I didn't add them up, no.

Q You don't know how many there were altogether then? A No.

Q How long were you doing that work? A About four weeks, I should think.

Mr. O'Connor: What work are you now referring to, to the 25 states?

Mr. Pease: No, the 16 states; how long were you doing these 16 states? A The entire 25 states—

Q No, I am asking you now about these.

Mr. O'Connor: The 16 states where he wrote the ratings?

Q Where you transferred the rating into Exhibit 9 book, how long were you doing that work? A How long was I in completing the work?

Q Yes, just these 16 states? A I am getting at it 843 by saying I finished the whole 25 states that I have given already, in about four weeks.

Q I want to know how long you were doing these 16 states? A Well, I should thing about three weeks.

Q Did you work at it continuously? A Yes, sir. No,—

Q Every day? A Every day with an interval in between.

Q What interval? A The length you mean, of time?

Q Well, I don't know what you mean. What do you mean by interval? A I can give you the time. (Looking at memorandum book) I worked on the book from July 30 until August 12, beginning the work again on September 27, finished it October 8. That is, of these 25 states.

Q When did you begin the work on these 16 states? A At the time I started that I started the work.

Q July 30? A Yes, sir.

Q When did you finish the work on these 16 states? A The work was done with these states in between, I couldn't say exactly.

Q You didn't work continuously on these 16 states until they were finished, before taking up the remainder of the 25 states? A Not before taking up the remainder of the 25, no, sir.

Q Did you do any other work during the time in which

you were working on this work, between these dates, July 30 and August 12, September 27 and October 8? A No, sir.

Q How many hours a day did you work? A Nine.

844 Q How long, on an average, did it take you to look up the rating of the name in Dun's book and put it down in the Lumbermen's Credit Association book? Look it up and compare it with that in Dun's book? A I couldn't say.

Q Well, about haw long? A Why, not very long.

Q Well, what do you mean by that? A I couldn't say the exact time it took me to look up one name. Some took me more and some took me less time.

Q Why? A Some names are harder to find in the book; that is, there are more names of one spelling, or something like that; case like that, take longer to find the name.

Q Well, would it take you a minute on each name?

Mr. O'Connor: I object to the witness stating, he couldn't say.

A I couldn't say the exact time it would take.

Q Well, would it take a minute more or less than a minute.

Mr. O'Connor: I object, the witness repeatedly said he couldn't tell.

A Sometimes more or sometimes less. No, I don't think it would take a minute in every case. I don't know without timing myself.

Q As to these 16 states you transferred to the Lumbermen's Credit Association book only the ratings which were not similar, which you considered as not being similar, did you? A No, I transferred the ratings, and any rating which appeared.

845 Q All ratings? A Yes, sir.

Q I thought you said that the ratings which you considered as being similar you indicated by a cross or check mark in ink following the name? A No, you are mistaken on that.

Q That is true only in the states then in which you did not—or in which the ratings were not transferred to this book, is that right? A No, you are mistaken as to the indication these check marks stand for. A check mark before the name would indicate that the ratings were similar, and behind the name would indicate that it was not carried at all in R. G. Dun & Company's book.

Q Then you transferred into this book as to these 16 states all the ratings in each instance? A Yes, sir, except in cases where none appeared, or where the name didn't appear.

Q Now, as to the remainder of the 25 states which you worked yourself, you compared only the ratings in ink which had previously been transferred, that is the ratings in the first column following the names with the printed rating in the book, is that right?

Mr. O'Connor: In what book?

Mr. Pease: In Exhibit 9?

A After verifying the names, yes—the rating, I should say.

Mr. O'Connor: After verifying what, the names and ratings?

A The names and ratings.

846 Q How did you make the comparison of the ratings?

A In the same way that I compared the others, with the exception that in place of putting the names in the book—the ratings in the book, I compared them to see that they were correct.

Q In each instance? A Yes, sir.

Q Did you have any assistance in that work as to the remainder of these 25 states? A No, sir.

Q Which comparison did you make first? A What state you mean?

Q No. With what did you first compare the ratings appearing in ink in the first column following the printed names in this book, Complainants Exhibit 9? A With the rating appearing in R. G. Dun & Company's book.

Mr. O'Connor: When you speak of the first column, you refer to the cases where there are two columns?

Mr. Pease: Yes, certainly.

Q And did you first compare the whole state, or all of the remainder of these 25 states in that way, or did you only compare a page at a time? A Compared a state at a time.

Q One state at a time? A Yes, sir.

Q Then with what did you compare that rating in ink? A With the rating appearing opposite to it in the book.

Q That is, with the printed rating? A Yes, sir.

847 Q Now what else did you do after that? A You mean with respect to counting them up?

Q With reference to the work; I want to know what else

you did, if anything? A On comparing the ratings I checked to see which were the same, in the same manner as I had done before, and then added them up, counted up the check marks.

Q Was that all that you did? A I think so, yes, sir.

Mr. O'Connor: You now refer, Mr. Pease—

Mr. Pease: Now, Mr. O'Connor, I know what I refer to.

Mr. O'Connor: I don't understand your questions myself.

Mr. Pease: The witness does, if he don't, let him say so.

Mr. O'Connor: I think counsel ought to have a right to understand your questions.

Mr. Pease: So long as the witness understands them, counsel ought to understand them.

Mr. O'Connor: No, I don't think that is quite fair.

Q Did you keep any memorandum of the tally or count of these check marks appearing in front of these names in this book? A Yes, sir.

Q Where is that tally check mark? Wait a minute. In what manner was that kept? A The number of names not appearing in the book usually placed at the end of a state.

Q But as you made the count did you keep a tally of it, or did you carry it merely in your head? A No, I kept a tally.

848 Q Where is that tally? A It was destroyed. It was simply to keep the tab. I kept tab on them in blocks of five.

Q What do you mean, blocks of five, what? A Putting down a straight line every time a name appeared and then crossing four lines with every fifth one, making a block of five lines.

Q And at the conclusion of this count as to each state what did you do? A I placed the number of names that were not in the book at the end of the state, simply as a memorandum, and then transferred the number to a memorandum that I kept myself.

Q And that was in the book from which you testified? A Yes, sir.

Q Was that memorandum at the end of each state in this book Exhibit 9 in ink or in pencil? A Some cases in ink, some in pencil.

Q Did you count all of the names in these 25 states yourself? A Yes, sir.

Q And made the memorandum at the end of each yourself? A Yes, sir.

Q At the end of Georgia I notice the figures 1120 in ink, and the figures 468 in pencil; are those your figures? A Yes, sir.

Q Both of them? A Yes, sir.

Q When did you transfer these figures to your memo-
849 randum book? A At the time that I wrote them in this book.

Q Well, after you had finished the count as to all the states? A No, after I had finished the count as to that particular state.

Q As to each state? A Yes, sir.

Q Have you checked or compared them since? A With what?

Q With this. Have you checked or compared your memorandum with the entries in this book? A No, sir, I don't believe I have.

Q You said in answer to Mr. O'Connor's question this morning that you took the ratings which appeared in the book for granted. What do you mean by that? A What ratings do you refer to?

Q The ratings which appeared in the book, which were written in the book at the time it was given to you? A All the ratings?

Q Well, that is what you said, I want to know what you mean by that.

Mr. O'Connor: No, he didn't say that he took all the ratings; he has just explained to you that he verified—

Mr. Pease: He said, "I took those for granted".

Q Now, what did you take for granted? A The ratings which were already in the book after I had completed these 25 states, that is where Mr. Hubel and myself worked on the book together.

850 Q I don't understand your explanation as to what you referred to when you said you took those for granted. A Very likely the previous question will explain it.

Q Do you recall what you meant? A Certainly.

Q Please state. A Just what I have said just now.

Q Well, state it again so I can understand it. A That I took the ratings—

Q What ratings do you refer to? A The ratings in ink.

Q From the first column? A From the first column

that I did not put in the book in the states with the exception of those 25—with the exception of those that I verified.

Q That is, you took those for granted as having been correctly transferred from Dun's book into this book? A Yes, sir.

Q As to the states in which the ratings appeared in ink, outside of the 25? A Outside of those 25 states, yes, sir.

Q Now will you please name the rest of the states comprising the 25 which you compared personally? A Just give me what you have there, and I will give you the rest of them.

Q Maine, Massachusetts, Michigan, Nevada, North Carolina, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming
851 and the District of Manitoba. A I gave you Minnesota, didn't I?

Q No. A I will add that: Montana should have gone in there, too. And Mississippi, didn't I give you?

Q No. Your testimony with reference to the 16 states and territories first named applies also to Minnesota, Montana and Mississippi, as to the manner in which you did the work? A As to the ratings when I did the work personally, yes, sir.

Mr. O'Connor: So there are 19?

Mr. Pease: 19.

Q What are the remaining states of the 25 on which you did the work personally? A Alabama, Idaho, Florida, Georgia, Connecticut, Delaware.

Q As to what other states did the ratings appear in ink in this book, Complainant's Exhibit 9 when you first saw it? A I have given the total of the states that were already in ink, haven't I?

Q I don't know, that is what I am asking you. A I think I have.

Q Well, have you? A I think I have, yes, sir.

Q Now which of these states in which the ratings appeared in ink, did you take for granted as being correctly transferred into this book, Complainant's Exhibit 9? A I will have to look them up in the book. That is when the two of us were working together?

852 Q Well, I don't know what you mean.

Mr. O'Connor: Yes, that is it.

A I didn't take any of them for granted when I was working alone.

Q You said that you did take for granted the fact that certain of the ratings in ink appearing in this book were correctly transferred from the Dun book; now which ratings did you so take for granted, I mean covering what states? A Well, none of them while I was working alone on the book.

Q I didn't ask you whether you was working alone or with somebody. A Well, that is what my testimony at that time, I believe, referred to.

Q Well, you remember testifying do you not, that you did take for granted the fact that certain ratings appearing in ink in this book were correctly transferred from the Dun book,—you remember that? A Outside of these 25?

Q Well now which states did you take that for granted? A Arizona, Arkansas, California, Colorado, the District of Columbia and the state of Illinois as far as the town of Caladonia, that I should think was about 275 names; the state of New York, with the exception of New York city, Ohio and Pennsylvania.

Q Are those all? A I think so.

Q Well, be sure. A I think that is all.

Q Is that as positive as you can be? A Without mak-
853 ing a fuller examination of the book and a more lengthy one. I was sure about that other case until I found out I was mistaken in overlooking a couple of states.

Q I notice in the left hand margin at the right of these names various memoranda in writing, for example, on the page headed "Wiscoy, Alleghany Co." New York, "See George R. Merritt" in whose writing is that? A That was already in the book when I got it.

Q Do you know whose writing it is? A No, sir.

Q Do you know what it refers to? A No, I do not. Refers to the name opposite to which it is placed, I suppose.

Q In making this comparison did you take into account these different memoranda? A No, sir, unless they—no, I did not.

Q Do you know from whom Mr. O'Connor received this book?

Mr. O'Connor: Objected to as immaterial.

A No, sir.

Q What does this dash mean, in pencil, at the left of certain names? A It is simply a memorandum to use in counting up the names.

Q How used? A Signified that was the end of a hundred. If I made a mistake in a hundred, would not have to go back to the beginning of the state and count them over again.

Q Do you say that the classifications as to the different branches of the lumber trade and lumber business and lumber consumers are identical in the Dun book and the

854 Lumbermen's Credit book? A I didn't compare them with that object in view.

Q Then you don't know? A No, sir. As far as I know they are all in the lumber trade, that is, in the lines you mention.

Q Do you know whether there was work done in Dun's office by other parties in connection with this case? A Yes, sir.

Q By whom? A By several of the clerks who were engaged in the same work that I was doing.

Q In the same kind of work? A Same thing, yes, sir.

Q Were the reference books of the Lumbermen's Credit Association taken apart and distributed in states among the others who were doing this work?

Mr. O'Connor: Objected to as immaterial.

A Yes, sir.

Q You know what book it was, or books?

Mr. O'Connor: Objected to as immaterial.

A Yes, sir.

Q Which? A It was the July, 1901 edition.

Q Was there any other books taken apart, of the Lumbermen's Credit Association? A Not that I know of, no, sir.

Q Was that book re-bound? A Yes, sir.

Q And is the one produced at this hearing and marked Complainant's Exhibit 8, is it not? A The one that was produced yesterday, yes, sir.

855 Q Did you ever have occasion to refer to the Lumbermen's Credit Association reference book in your work in connection with Dun's office, prior to July 30, 1902? A Never heard of it before.

Q Do you know whether they had the red bound book in the Grand Rapids office?

Mr. O'Connor: Objected to as immaterial, not proper cross examination.

A No, sir.

Mr. O'Connor: What was the name of the young man who made the comparison of the two books with you?

A Hubal.

Mr. O'Connor: What is his first name?

A Jerry.

Q What did you do during this interval, Mr. Stein, between August 12 and September 27? A The regular work that I was engaged upon before, that is, the regular office work, answering inquiries.

Q Why did you stop doing the work on those books during that time? A I was told to do so.

Q By whom? A By the Manager.

Q Who is the Manager? A Mr. Douglas.

Q What did he say to you?

Mr. O'Connor: I object as immaterial and not proper cross examination.

A Let us see,—I don't remember his exact words; he said that Mr. O'Connor wanted the book, I should take
856 it over to his office.

Q Which book? A The January, 1902 edition of the Lumbermen's Credit Association book.

Q That was August 12?

Mr. O'Connor: That was about the time I sent it to New York in connection with the depositions, wasn't it?

Mr. Pease: Yes, there the 15th.

Q And from whom did you receive your instructions when you resumed the work September 27th? A From Mr. Gallagher, Chief Clerk.

Q During that time did Mr. Hubal work with you on this? A For the last twelve days or so.

Q When was the work done on the other book, the July book? A At the same time, since Mr. Hubal has been working with me.

Q That is in the last two weeks? A Yes.

Mr. O'Connor: By whom was that work done?

A Mr. Frank Gallagher and A. B. Kramer, I think his initials are A. B.

Mr. Pease: I think that is all.

Mr. O'Connor: That is all.

857 JERRY HUBAL, called as a witness on behalf of complainant, being first duly sworn, testified as follows: Depos Jerr

Direct Examination by Mr. O'Connor.

Q State your name? A Jerry Hubal.

Q What is your occupation? A I am counter clerk for R. G. Dun & Company.

Q How long have you been in their employ? A Seven years this month.

Q Did you work with Mr. Stein in making a comparison between any books of R. G. Dun & Company and the Lumbermen's Credit Association? A Yes, sir, I did.

Q What books did you compare? A January, 1902, of the Lumbermen's Credit Association, and the reference book of R. G. Dun & Company of September, 1901.

Q How did you work together in making the comparison? A Why, Mr. Stein called off the ratings of the Lumbermen's Credit Association. Let me see if he did,—while I checked them; that is, he looked in the reference book of R. G. Dun & Company and gave me the equivalent rating of the Lumbermen's Credit Association book and I checked them.

Q What do you mean by equivalent rating? A Why, the rating that—that is, exact rating, the same rating.

858 Q Given to the same person? A To the same persons.

Mr. Pease: I object to your leading the witness.

Q Let me ask you to explain what you mean exactly, by equivalent ratings? A Why, in comparing R. G. Dun & Company's rating and the Lumbermen's Credit Association rating, he gave me the rating that was alike and I checked it in the Lumbermen's Credit Association book.

Q Who had charge of the book of the Lumbermen's Credit Association? A Why we both, myself and Mr. Stein had charge of it.

Sometimes one had charge of the book—

Mr. Pease: I object to leading questions.

Q —and sometimes in charge of the other? A Yes, sir.

Q When you had charge of the Lumbermen's Credit Association book and Mr. Stein had charge of R. G. Dun & Company's book how did you do the work? A Why, he called off the rating, that is, he gave me the rating that should be in

the Lumbermen's Credit Association book and I checked it.

Q What did you do? How did he know what name to look for?

Mr. Pease: I submit that isn't fair.

A I called off the names of the Lumbermen's Credit Association.

Q Tell us exactly what you did; tell us the process.

859 A I called off the name from the Lumbermen's Credit Association book while he looked it up and gave me the rating that should be in their book, and if it wasn't there I would mark it with an "X". We had a certain column for that, and if it was there I would mark it with an "X" also on the left hand column.

Q He gave you the rating that was given to that name in R. G. Dun & Company's book?

Mr. Pease: I submit that that isn't fair, at all.

Mr. O'Connor: I want to understand the witness.

Mr. Pease: You ask your questions properly; I have no objections to his telling just exactly what he did and how he did it, but I do object to your leading him.

Mr. O'Connor: I am not leading the witness, I simply want to understand what was done.

Q When you called off the name from the Lumbermen's Credit Association book— A Yes.

Q —What did Mr. Stein do? A Why he gave me a rating.

Q What rating? A Well, the rating that should be in that book.

Q That should be in what book? A The Lumbermen's Credit Association book. He gave me the rating because—

Q The rating that should be in that book? A In that book, yes.

Q Where did he get the rating that he gave you?

860 A He would compare the ratings; he would compare them before he would give them to me. Do you understand? He would compare our rating with their rating at the same time that he gave it to me, and I simply checked.

Q Did you give him any rating? A No, sir. I did at times, that is, when we changed. The way I gave him ratings was this way, whenever he was checking I simply gave him the rating from Dun & Company's book, their rating, and he simply compared our rating, Dun & Company's rating, with their rating, and he checked it or didn't check it, according to whatever it was.

Mr. Pease: I object to this witness stating what Mr. Stein did. Depos. Jerr

Q When Mr. Stein had charge of the Lumbermen's Credit Association book and you had charge of Dun & Company's book, what did you do? A I simply called off the name and gave him the rating.

Q What name? A The name in the book.

Q Where did you get the name; how did you know what name to look for? A Rather, he called it off. I made a mistake. He called off the name.

Q He called off the name from the book of the Lumbermen's Credit Association? A Yes.

Q Then what did you do? A I simply looked the name up, gave him the rating in our book, in Dun & Company's book.

861 Q Then what did he do? A He compared the ratings and he checked them.

Mr. Pease: I object to what Mr. Stein did.

Q When you called off the rating from Dun & Company's book did you call it off correctly? A As far as I know I did.

Q Now when you changed, and you took charge of the book of the Lumbermen's Credit Association and he took charge of R. G. Dun & Company's book, what did you do? A I called off the name.

Q From what? A From the Lumbermen's Credit Association book.

Q The names as they appeared in that book? A The names as they appeared.

Q All of them?

Mr. Pease: Object to the question as leading.

A At times, yes; at times.

Q That is, you took the names in their order, did you?

Mr. Pease: Objected to as leading.

A In their order.

Q And did you call off the names correctly as they appeared in the book?

Mr. Pease: Objected to as leading.

A To the best of my knowledge and belief, I did.

Q After you called off the names what did he do?

862 Mr. Pease: Objected to.

A Why he gave me their rating.

Q Where, what ratings? A Gave me the Lumbermen's Credit Association rating.

Q I am now asking what he did when you had charge of the book of the Lumbermen's Credit Association? A When I had charge?

Q Yes, when you had charge of the book of the Lumbermen's Credit Association and he had charge of R. G. Dun & Company's book. You called off the names from the book of the Lumbermen's Credit Association? A Yes.

Q Now what did he do? A He gave me the rating that should appear in the Lumbermen's Credit Association book.

Q Where did he get the ratings that he gave you?

Mr. Pease: Objected to.

A Why he got our rating and he had their rating, the Lumbermen's Credit Association book right before him, and he compared them at the time and gave me their rating.

Mr. Pease: I object to what Mr. Stein did.

Q What did you do with the rating that he gave you? A Why, if it was similar I would mark it with an "X", and if it wasn't I wouldn't pay any attention to it, I would go on with the next one.

863 *Cross-Examination by Mr. Pease.*

Q What ratings did you treat as similar? A Why all ratings that were alike and the references.

Q What ratings did you consider alike? A What ratings I considered alike?

Q Yes. A Why if he called them off, he gave me the ratings already that were alike and if they were there I would mark them with an "X" or I didn't pay any attention to them.

Q What ratings did you consider alike? A I don't understand your question.

Mr. O'Connor: Mr. Pease, as I understand, it was the other man who made the comparison.

Mr. Pease: Well, I don't know, that aint what the other man said.

Q For instance, Mr. Hubal, what rating in R. G. Dun & Company's book did you compare?

Mr. O'Connor: Let me ask a question: Who made the comparison of the ratings?

Mr. Pease: I object to that as leading.

Mr. O'Connor: Who made the comparison of the rating?

A Mr. Stein did.

Q Then what did you do? A He gave me the rating

and if it was alike I would mark it with an "X", or wouldn't pay any attention to it if it wasn't alike. Deposit Jerry

Q That is, you had the Lumbermen's Credit Associa-
864 tion book before you with the printed rating? A With the printed rating, yes, sir.

Q And you read off the name, did you, from the Lumbermen's Credit Association book? A Yes sir.

Q And Mr. Stein would call back to you the rating which appeared in R. G. Dun & Company's book,—the rating given the same name in R. G. Dun & Company's book? A No, sir, he gave me the rating that should appear in that book.

Q Now what do you mean by that? A He compared it.

Q What do you mean by that? A When I called off the name from the Lumbermen's Credit Association book—

Q And the rating? A —he answered me by giving me the rating—or rather, he gave me the rating that should appear in that book.

Q What rating should appear in that book? A Well, the rating that ought to be in that book, that is, if they were alike.

Q Well, how did you determine what ratings should be in the red book,—Lumbermen's Credit Association book? A Why, there was nothing to determine about it, he gave me the rating.

Q He gave you the rating in the Dun book? A He gave me the rating that should be similar to our rating. That is—if I could only illustrate it to you.

865 Q Well, illustrate it, take the book and illustrate it. Take both books. Well, that aint the same but it will be all right to illustrate. Just one question first. How did he give you the rating, in the key, or in dollars and cents? A In the key.

Q In the key? A Yes, sir.

Q And which key did he use, Lumbermen's Credit key or the Dun key? A He used them both, of them because he gave me—why he used their key, yes.

Q He used the Dun key? A He used the Lumbermen's key, that is, used both of their keys in comparing them, but he gave me their key.

Q What did he say to you, for instance you found the name of John Smith in the Lumbermen's Credit Association? A Yes.

Q Under, say, Chicago, Illinois, and you called that off, John Smith? A Yes.

Q Now what else did you do, did you give him— A I didn't give him anything, only called the name off under the head of the town.

Q Didn't you call off the rating? A No, sir, he had the rating of the Lumbermen's Credit Association book and Dun & Company's book right before him; this there is made out in a line and he compared them right there.

Q What were they in? A How do you mean?

866 Q Well, you say he had them in a line. A He had them in a column.

Q Did he use this book, Complainant's Exhibit 9, that the book he had? A No, sir; I think this is the book. He had the January, 1902 book.

Q Well, this is the January, 1902 book. A Well, that is the book.

Q Did Mr. Stein use this book? A He did.

Q All the time? A He did, used the same book that I used.

Mr. O'Connor: No, not all the time?

Q Supposing you had this January, 1902 book before you and you were using it, take this page here, to which we open. What did you do now? You read the name? A Read the name off, yes, sir.

Q And what else? A That was all I did when I had charge of that book.

Q That is all you did? A That is all I did, and he gave me the rating that should appear in that book if it was similar.

Q What did Mr. Stein have before him when you had this book, Exhibit 9? A Had R. G. Dun & Company's book.

Q And you read off the name? A Read off the name and checked the rating if they were alike. If they were not alike I didn't mark them at all. just pass them on, didn't pay any attention to them.

867 Q Did you call off then only the names in which you found the ratings to be similar? A What is that, I don't understand the question.

Question read.

A I didn't compare the ratings; I called off the names.

Q And that was all? A That was all. That is, after he—

Q For instance, you said, John Smith? A Yes.

Q That is all you said? A John Smith, and he gave me the rating.

Q Now what did he give you? A If he gave me the rating that was similar I would mark it with an "X" on the left hand side, and if it wasn't alike I wouldn't mark it at all.

Q Who determined whether it was similar or not? A A Well, I did.

Q You did? A Or rather, he did.

Q Well, which? When you had the Lumbermen's Credit Association book before you? A Of course he compared it, and I marked it if it was similar.

Q Well, who determined whether it was similar or not? A I did.

Q You did? From what did you determine that? A From what he says. He gave me the rating and I would compare it there.

Q He gave you the rating that was in the Dun book, did he? A He gave me the rating that should appear in that book.

868 Q What rating should appear in that book? A Well, the one that he found in our book and in the red book and then he would compare and if they were alike why he would give that to me.

Mr. O'Connor: Can you take an instance and follow it out and explain to us just how you worked together? A I can.

Q Is that the book that you used, look at it (indicating Exhibit 9)? A Yes, sir.

Q You looked at the title page, didn't you? A Never saw the title page, but I know it was January, 1902.

Q You just looked at the page here (indicating) didn't you? A Yes, I looked at that.

Q And from that examination of that page you stated that it was the same book? A Why, I can see that I worked on it.

Q You can? A Well, do you want me to show you?

Q What do you see in there that indicates to your mind that you worked on that particular book? A Well now, I can't say whether these are my exact markings, they may be Mr. Stein's, he did some of the marking.

Mr. O'Connor: Are there any marks in the book by which you can identify it as the book which you used?

A I put some of the totals down.

of
ubal.

Mr. O'Connor: Look and see if you can see any of the
869 totals that you figured? A Here is some of my figures right here (indicating).

Q Where? A In Maryland.

Q At the end of Maryland? A Yes, sir.

Q Which figures? A 723, 186 and 201.

Q Those made by you? A They were made by me.

Q What do they indicate? A Why they indicate the total of names in that state, the total of names that are similar, and the total that are not in the book.

Mr. O'Connor: No in what book?

A Not in our book, in our reference book; in R. G. Dun & Company's book.

Mr. O'Connor: From those figures you can identify that as the book on which you worked?

A Yes, sir.

Mr. O'Connor: Now will you please take the instance by which you were going to explain?

Mr. Pease: Who is examining this witness, you or I?

Mr. O'Connor: Let us both get at it. What is the use of wasting two or three days?

By Mr. Pease:

Q Go ahead now. A Here is a name in Wye Mills, of Maryland, and the name called for is S. J. Dolby; I called that name off to Mr. Stein. I see by the mark that it is not in our book. That is one instance.

870 Q Take an instance where it is in your book. A I will. Here is a name in Woodsboro, of the same state, Maryland; the name is Cutshall & Fogle. Now I don't call off the rating, but I called off that name and he gives me the rating that should appear in this book; he gives me a D rating.

Q What rating should appear in that book, in that instance? A The "D" rating if it is similar, it is marked similar here, so that rating should appear.

Q Should appear there because it is similar? A Because it is similar.

Q What do you mean by the rating should appear in that book? A Well, what I mean by should appear is, that is if it is similar it should appear just the same as it is in our reference book, R. G. Dun & Company's.

Q Well now, taking that case there, you read off the name? A Yes.

Q Cutshall & Fogle, and that is all you did, is it? A Yes, sir.

Q And what did Mr. Stein say? A Why, gave the rating.

Q No, what did he say? Well, what rating did he give you? A Give me most any rating.

Q He would? A Why he would give me a rating, of course he would compare them and then give me the rating.

I don't know what rating he would give me, he might have
871 given an A or a B, for all I know.

Q What would he compare? A He would have—

Q He had the Dun book? A He had the Dun book.

Q And you had the Lumbermen's Credit book, is that right? A What is that?

Q He had the Dun book and you had the Lumbermen's Credit book? A Yes.

Q How did you sit? A We sat together; he sat right here (indicating) and I sat right there (indicating).

Q You mean side by side, or opposite? A Side by side.

Q All right, now go ahead.

Mr. O'Connor: Did he look on your book while you were?

A No, sir, he did not, not that I know of. He may have.

Mr. O'Connor: Well, find that name in R. G. Dun & Company's book and tell us what—

Mr. Pease: This aint the right book, this is the July book. That aint the book you compared that book with? A Septembed, 1901.

Q What other states then did you put down the totals of? A I don't recollect.

Q Well, can you find out? A I don't know. I can recognize my figures, though.

Q Well, go ahead. A I find here in Missouri I put down the totals.

872 Q Well, what other states? A New Jersey.

Q Go on through, give us all. A New York; that is, I did part of it.

Q What part? A The last two totals are mine, the first one is Mr. Stein's. Here is one, North Dakota.

Q Did you do it? A The whole state, that is the counting, I put down the figures.

Q The totals? A The totals. I gave you Maryland, didn't I?

Q Put it down again, be sure and have it. A Louisiana.

Here is one, Kentucky, I don't know whether the first total is mine, it looks very much like mine. Kansas. I think that is all.

Q How did you arrive at those totals? A Why, we counted them up, Mr. Stein and myself.

Q I am asking you now with reference to the totals which you put down, did you count them or Mr. Stein count them? A The both of us counted them, took turns at counting them.

Q Well, Mr. Stein put down part of the totals? A Yes.

Q And you put down part of the totals? A Yes; that is, we didn't put down the totals; my writing is there to show whether I wrote it or not, but I mean in counting up the columns of names, whenever we could count up to 100, whenever we would get to 100, mark it with a check, and he
873 would take his turn at counting. One state may have been counted by the both of us, or he might have counted up all the names and I would count up all the similarities and he would count up the names that weren't in the book.

Q And then one or the other of you would write down all of the totals? A Yes.

Q Sometimes one, sometimes the other? A Yes.

Q Just as it happened? A Yes.

Q That right? A Well, my figures show what I put down there.

Q Well, I know, that shows what you did? A Yes.

Q But in those states for instance, in which you wrote down the totals Mr. Stein may have counted some of the names that, for instance, were not in Dun's book, or some of the names in which there was a similar reference rating, or some of the names in which there was similar capital rating, is that right? A Yes, sir, he may have counted them, yes.

Q And he told you what the total number was in those instances, in such cases, and you put it down, that right? A I don't think so, no. If he counted up the last part he would put the total down, if I did, why I would put it down.

Mr. O'Connor: Each put down what he counted himself?

A What he counted himself, that is at the end. If he stopped at 100 and say the total was 150, and I count the fifty, I would put down 150.

Q He may have counted the 100? A Well, I am just saying that as an example.

874 Q But in some cases that is the way it was actually done? A Well, may have been done that way, yes.

Q Now with what ratings in R. G. Dun & Company's book did you compare the four A in the Lumbermen's Credit Association key as being similar? A Why, I believe it was AA, I am not sure, we had always the key before us to determine that.

Q Wel, have you the keys with you now? A No, Mr. Stein had it written on a piece of paper, I haven't got it, but if you want to see it, we have a copy out there, the other gentleman has it.

Q No, I want you to see it, I know where to find what I want to see. Will you please look at the keys of the Lumbermen's Credit Association and R. G. Dun & Company and state what you compared in R. G. Dun & Company's key as being similar with the four A in the Lumbermen's Credit Association key. A Four A in the Lumbermen's Credit Association key?

Mr. O'Connor: Did you make the comparison?

Mr. Pease: Now, Mr. O'Connor, he has stated that he did, I don't want you to interrupt this witness when I am cross examining him.

Mr. O'Connor: I want to know whether you refer to him alone or to him and Mr. Stein, when you say "you".

Mr. Pease: Who would I refer to? I refer to Mr. Hubal here.

875 A Well, to tell you the truth I did very little comparing the ratings.

Q Well, you have been telling us the truth all the time, haven't you? A Why, certainly I have.

Q Well now, you did make some comparisons? A Why, yes.

Q Now answer that question, the last question. A I would like to have it read over, I can't remember it.

Q I want to know what, in Dun & Company's key you treated as similar,—compared as being similar with this four A rating in the Lumbermen's Credit key. A I believe it was C.

Q Is that the only rating in the Dun key which you treated as similar to the four A rating in the Lumbermen's Credit Association key in this comparison which you have made? A May have been B.

Q Well, did you? A I can't say, because I had the thing before me all the time; that is, he read off the comparisons and if they were alike I checked them, that is all I can say.

of
bal.

Q You have the keys before you now; I am asking you what ratings in the Lumbermen's Association key you treated as similar to the ratings in the Dun key, in this comparison. A Why, I can't tell very well about the A, I could tell you about the other cases.

Q Go ahead and tell us what ratings in the Lumber-
876 men's Credit Association key you treated as similar. A Well, if you want me to begin from the bottom I will give them to you.

Q All right, begin at the bottom, if you want to. A Well, I treated M, in Dun & Company's book as equal to H, in the Lumbermen's Credit Association book.

Q All right, go right up the line. A And "L" to—or rather, how did I give that?

Q That is right, "L" in the Dun key— A In the Dun key, as equal to "BF". No, not "BF" but "G".

Q All right. A "K" to "EF".

Q You mean "K" in the Dun key? A "K" in the Dun key to "EF" in the Lumbermen's Association, and "J" to "F".

Q "J" in the Dun key to "F" in the— A And "H" to "E".

Q "H" in the Dun key to "E" in the Lumbermen's Credit key? A "G" to "D". The first key that I am speaking of is going in the R. G. Dun & Company's key. "G" in the Dun key is equal to "D" in the Lumbermen's Credit Association book.

Q All right, now take the next. A "F" is—

Q "F" in the Dun key—? A "F" in the Dun key is equal to "C" or "BC".

Q Well, which? A The both, "C" or "BC".

Q You treated them— A Alike.

877 Q All right. A "E" in the Dun key equals the "C" in the—or "B" in the Lumbermen's Credit Association.

Q Well, which? A "B".

Q Go ahead. A "D" in the R. G. Dun & Company book equals "AB" in the Lumbermen's Credit Association book. And "D" plus, equals "AB" in the Lumbermen's Credit Association book.

Mr. O'Connor: What is that?

A D plus.

Mr. O'Connor: Have you given "D"?

A I gave "D" and "D plus". "C" equals "AB", or rather "A" in the Lumbermen's Credit Association book. Depo Jer

Q Go ahead. A "C plus" equals "AA".

Q Yes? A "B plus" equals "AAA".

Q Wait a minute, you skipped "B" in the Dun key. What does "B" equal in the Dun key? A "AA".

Q In the Lumbermen's Credit Association key? A Yes. "B plus" equals "AAA", in the Lumbermen's Credit Association book, and the As are all alike, wherever we had a plus, we treated it just like as the highest rating in the Lumbermen's Credit Association book.

Q Which was "AAAA"? A No, I am not saying that this is exactly, that is as far as I recollect. We had the key right before us when we were doing the work.

Q You had the Lumbermen's Credit key before you
878 when you were doing this work? A Mr. Stein had it.

Q Did you have it? A Why, it was right there, I could see it.

Q Well, you used it, did you not? A Yes.

Q Then you both had it? A Yes.

Q Then you had it? A Yes.

Q Could have gotten at that a good deal quicker if you had said it first. Now the capital ratings indicated by these different letters which you say treated as equal, do not in all cases represent exactly the same amount, do they? A They do up to about "CF", I think, around "C" then they change, I think "CF" and "C" is about the same amount, and the As dont—

Mr. O'Connor: I object, because the keys will speak for themselves.

Q When they are not the same in amount how did you determine which was similar? A We didn't compare them in amount, we just compared them by ratings.

Q What ratings? A Ratings in Dun's book and the Lumbermen's Credit Association book.

Q What character of ratings? A Why, the capital ratings.

Q Now as to the comparison of the capital ratings when the amounts were different, how did you determine what was similar and what was not similar? For example, "F" in the Dun key indicates a capital rating of two to twenty
879 thousand? A Yes.

Q While "BC" in the Lumbermen's Credit indicates

a capital rating of ten to fifteen thousand; now did you treat those as similar? A Why Mr. Stein, whenever I had a case like that he would say "C" or "CB", or rather—yes, "C" or "CB", treat alike.

Q That is to say, you treated in all instances the "BC" in the Lumbermen's Credit Association key and the "C" in that key which indicates a capital rating of fifteen to twenty-five thousand, with "F" in the Dun key? A Yes, sir.

Q You said a moment ago that in making this comparison you paid no attention to the capital, to the amount of capital.

Mr. O'Connor: I don't remember the witness making any such statement.

Mr. Pease: Read that question and answer.

Question and answer read as follows: "When they were not the same in amount how did you determine which was similar?" "A We didn't compare them in amount we just compared them by ratings."

Q What do you mean by that? A I mean we didn't compare the amount in dollars and cents, but we compared them by rating, capital rating.

Q What is the capital rating? A Why, the capital
880 rating is the pecuniary strength, financial strength.

Q How indicated? A How indicated? By letters.

Q Well, what do the letters indicate? A Certain amounts.

Q In both cases, don't it? A How do you mean in both cases?

Q In the Lumbermen's Credit key and in the Dun key? A Why, yes.

Q And yet in making this comparison you paid no attention to the amount of capital. You paid no attention to the amount of the capital ratings? A Why, simply paid attention,—of course I paid attention to the capital rating, but—

Q No, I said to the amount.

Mr. O'Connor: Let him finish his answer.

A There is no amount given except by the capital rating, that is the amount.

Q Well, you mean that the amount for which the different letters stood was not stated? A Was not stated, that is correct.

Q In any instance? A No, sir.

Q Then you had a schedule to work to, did you? A Yes, sir, we had that.

Q Who furnished you with that schedule? A Well, I don't know who furnished Mr. Stein. Mr. Stein made it up.

Q And what was that schedule? A Rating of R. G. Dun & Company and the rating of the Lumbermen's Credit Association.

881 Q I understand, but that is what it was composed of. But what was the schedule? The schedule was your instructions, wasn't it? A Why, yes, for comparison.

Q For the purpose of making this comparison? A Yes.

Q Now in those instructions did your schedule direct you to count as similar the "C" and the "BC" ratings in the Lumbermen's Credit Association key with the "F" rating in the Dun Key? A Yes, sir, the schedules show that.

Q Where is that schedule, have you got a copy of it? A No, sir, I haven't.

Q Do you remember what it was further than that? A Just what I gave you there, that is about the schedule, what I gave you, what the ratings equal.

Q And you worked to that schedule? A Yes, sir.

Q Without considering or knowing the amount of capital represented by the ratings? A Well, I knew our capital rating but I didn't know the Lumbermen's Credit Association, I didn't study it up.

Q Then you made this comparison and this count without knowing the capital rating indicated by the key of the Lumbermen's Credit Association? A I did, yes, by the rating that we compared from our book.

Q Well, you did it by—you made the comparison entirely by the schedule or instructions which were given you, did
882 you not? A Yes, sir.

Q By whom was that schedule prepared? A Well in the first I saw it was made by Mr. Stein, I suppose, because it was his writing.

Q It was in his writing? A I think so, yes.

Q Where was it written? On what was it written? A It was written on a piece of paper.

Q Was it written anywhere else? See it in a book, memorandum book? A No, sir.

Q Know what became of it? A No, sir; suppose Mr. Stein has it, I don't know.

Q Then in making this comparison you and Mr. Stein referred to this schedule? A At times, yes.

Q What if anything else did you do? A Besides comparing and checking?

Q Yes. A Counting, and that is about all.

Q What if any other comparisons did you make besides the comparison of capital ratings as indicated by the two keys? A Why, reference ratings.

Q What do you mean by that? A Whenever we had a similarity in a name that referred to another state as headquarters and it was in R. G. Dun & Company's book and the Lumbermen's Credit Association book, we would mark it similar.

Q That is when the name of any concern in the Lumbermen's Credit Association book said, "see St. Louis, Missouri"— A Yes.

883 Q —for instance, and the same information was expressed in the Dun book as to the same name— A Yes, sir.

Q —you called that a similar reference rating? A Yes, sir.

Q Were they expressed in the same words in both books? A No, sir. Some of them were and some of them were not

Q In what different words did you count or include these similar reference ratings in the two books? A I considered a reference similar, that is in the R. G. Dun & Company book if it says, "See St. Louis" for instance, and it says "purchasing department" in the Lumbermen's Credit Association book, why we considered them alike.

Q You considered them as a similar reference rating? A Yes, sir.

Q Were there any other words used in these two books which you included in this similar reference rating? A Why, there may have been, yes. There may have been a name where some man is proprietor and it is in our book the same way, we mark it similar.

Q You recall any such words? A Blank ratings, yes.

Q Well, I am referring now to the similar reference ratings. A No, I don't remember any other besides those two.

Q The "see St. Louis", for example— A Yes.

884 Q —and "purchasing department St. Louis"? A Yes, sir.

Q And "proprietor"? A Yes, there are three.

Q Do you recall any others? A No, sir.

Q Were there any others? A Don't believe there were.
Q Which form did the Dun book use? A Why, we use usually, "see."
Q "See St. Louis"? A When referring to headquarters.
Q And the Dun book does not use "purchasing department"? A No, sir.
Q Does the Dun book use "proprietor? A Yes, sir.
Q Does the Dun book use the word "office"? A No, sir.
Q Or "no yard"? A I don't believe they do.
Q Then the reference ratings which you included in this comparison as indicated in the similar reference ratings, referred only to the "purchasing department", "see St. Louis" and "proprietor"? A Yes.
Q Now in the case of these similar ratings, reference ratings which you counted, did you refer to the capital rating given the party at headquarters? A No, sir; if it wasn't rated why we would not mark it at all, that is if it was rated in our book, if it wasn't rated mark it similar.
Q Did you, I say, in each instance of these similar referenence ratings, refer to a party's capital rating at headquarters to see whether they were similar or not? A No, sir, we did not.
885 Q With what did you compare in the Dun key as being similar the rating of 100 given in the Lumbermen's Credit Association key? A Why, "M".
Mr. O'Connor: Not $100, simply the number 100.
Q Didn't you know that the Lumbermen's Credit Association key had a rating indicated by the figures 100? A No, sir, I did not.
Q Didn't know it at the time you made this comparison? A No, sir, I did not, until now.
Q What did you compare the rating given in the Lumbermen's Credit Association book as "33C1" as being similar to in the Dun key? A "33C1"? Well, what is the capital rating for the "C"?
Q "C1"—"C". A Why, "2F".
Q. Did you take any account of the "33"? A Paid no attention to the credit rating. "33" is the credit rating, isn't it?
Q Or anything else? A Didn't pay no attention to the credit rating.

Q Did you pay any attention or take into consideration anything outside of the capital rating? A Why, no, don't think we did.

Q You know, don't you, whether you did or not? A No, I can't recollect whether I did or not, but I am sure I didn't. I don't think I did.

886 Q How did you treat the rating indicated by the figure "7" in the Lumbermen's Credit Association book? A "7"?

Q Yes. A Didn't treat it at all.

Q Did you pay any attention to any figures in the Lumbermen's Credit Association ratings at all? A No, sir.

Q The only ratings which R. G. Dun & Company give is a capital rating and a credit rating, is it not?

Mr. O'Connor: Objected to because the books speak for themselves.

A Yes, sir, capital rating, credit rating and blank rating.

Q What does your blank rating indicate? A Why, I suppose it indicates—

Mr. O'Connor: Objected to because the key will speak for itself.

Mr. Pease: That is one of the ratings which he compared.

Q Go ahead. A Why, when it is difficult to give a rating; give no rating.

Q That is what you mean by blank rating? A Blank rating, that is what the book says, I think.

Q What did you treat in the Lumbermen's Credit Association book as comparing with the blank rating in Dun's book? A Well, it was either blank—must have been blank nothing there.

887 Q I am asking what you did, now. A It is hard to answer that question, a blank rating is a blank rating, either way.

Q You mean where there was no rating? A No rating at all.

Q No rating given in either book? A In either book.

Q That is, no capital rating? A No capital rating, yes.

Q Did you at that time examine the key of the Lumbermen's Credit Association to ascertain what blank rating indicated by that key? A No, sir.

Q That was a part of this schedule, was it? A I don't believe it was on there, I only had the understanding from Mr. Stein, a blank rating was to be treated alike.

Q Take a rating given in the Lumbermen's Credit Association book as "89 3". A "89 3"? Depos Jerry Hubal

Q Yes. A I believe I told you I didn't compare by the figures.

Q Well, wait till I get through with my question. With what did you compare that rating as being similar in the Dun book? A What is it, "89 3"?

Q "89 3"? A It is a blank 89 3 is it?

Q Look at it, says "89 3". A We treat that as blank.

Q You treated that as blank, did you? A Yes, sir.

Q And what else did you treat as blank? A Well, we treated as blank any credit rating—blank in the credit rating.

888 Q That wasn't blank, was it? Did you know at that time, or do you know now what the "89" in the Lumbermen's Credit Association key indicates? A No, sir, I do not.

Q Did you know at the time you made these comparisons, what the "89" in the Lumbermen's Credit Association key indicated? A No, sir.

Q And yet you disregarded that rating and counted it a blank? A A blank.

Q And as being similar to a blank rating, or no rating, which is not rating, in the R. G. Dun book? A It may have been I don't know, yes. If he says blank and it is a blank 89 and a half or 89 and a third in your book, might mark it similar, we would consider that as blank. It is blank 3 in our book.

Q And you considered the 89 as blank? A Yes. I had no instructions to consider that as anything.

Q What are your duties over there in Dun's office? A Answering inquiry tickets.

Q How long have you been with them? A Seven years.

Q Are you familiar with the ratings given by R. G. Dun & Company, I mean upon reports or information received in the office? A Yes.

Q When did you commence this work of comparing these two books? A Be two weeks this Friday, I think it was the 24th or 23rd of October last.

Q Had you done any of it prior to that time? A No, sir.

889 Q On the key of R. G. Dun & Company how many ratings is it possible to give the same concern? A Don't

believe there is any; they are not the same; they mean entirely different in a financial way.

Q I mean, does Dun & Company give a concern more than one rating? A More than one rating?

Q Yes. A They give them a capital and credit rating.

Q Then there are two ratings? A Two ratings.

Q And that is all? A That is all.

Q And the credit rating is based on the capital rating? A Yes, and the paying qualities.

Q What do you mean by paying qualities? A Well, if a man is slow we give him a credit rating which indicates slow.

Q What in the Dun key indicates slow? A Indicates limited credit? 4 indicates limited credit.

Q Suppose a man might be worth $50,000 and be good credit and yet be rated 3 in your key.

Mr. O'Connor: I object unless it is shown that the witness has knowledge of the ratings.

Mr. Pease: Says he is familiar with it, I asked him that question.

A If he is rated 3, it may be on some other grounds; if he is honest, he may be slow pay but he pays up in the end, it may be that.

890 Mr. O'Connor: What does "3" indicate?

A "3", fair.

Q Do you know by whom the ratings appearing in ink in the two columns opposite the names in certain states in the book Exhibit 9, were made? A No, sir, I do not.

Q You didn't consider or take into account in making this comparison of these two books, the names in R. G. Dun & Company's book in the lumber business and associated lines that were not in the Lumbermen's Credit Association book, did you? A You mean that if the name wasn't in the Lumbermen's Credit Association book, don't you?

Q Yes. A Why, if it wasn't there I couldn't read it off. We read the names from the book.

Q You read from the Lumbermen's Credit Association book? A Yes, all the time.

Q And you made no comparison or examination as to the names in the lumber business and associated trades— A No.

Q —in the Dun book that were not in the Lumbermen's Credit Association book? A No, sir.

Q There may have been such names? A There may have been, yes; we didn't read any names from the R. G. Dun & Company book to see if you have them in your book.

Q Were there any check marks made in the book of R. G. Dun & Company which you used in making this compari-
891 son? A No, sir.

Q No marks made in that book at all? A No, sir, no marks.

Q They were all made in the— A In the Lumbermen's Credit Association book.

Q —Lumbermen's Credit Association book? A Yes, sir.

Q No check marks at all of any kind or character? A No, sir, I didn't make any, and I don't think Mr. Stein did.

Mr. Pease: Is Mr. Stein here?

Mr. O'Connor: Yes, I think he is out there.

Mr. Pease: I wish you would bring him in.

Mr. O'Connor: Wait a minute, I want to ask some questions.

Re-direct Examination by Mr. O'Connor.

Q Will you please look at these two keys, the key of R. G. Dun & Company and the key of the Lumbermen's Credit Association, and tell me what letter in the key of the Lumbermen's Credit Association you considered as equivalent to "D" in R. G. Dun & Company's? A "G".

Mr. Pease: Treated as similar.

Q As equivalent to "D", thirty-five thousand to fifty thousand? A It was "1".

Q You misunderstand me, I am not asking you what
892 letter in Dun & Company's book you considered as equivalent to "D" in the book of the Lumbermen's Credit Association, but what letter in the key of the Lumbermen's Credit Association did you consider as equivalent to this letter "D" in R. G. Dun & Company's book? A I believe it was "AB".

Q And what letter in the key of the Lumbermen's Credit Association book did you consider as equivalent to the letter "D plus" in R. G. Dun & Company's key? A "A".

Q And what letter or letters in the key of the Lumbermen's Credit Association did you consider as equivalent to the letter "C" in R. G. Dun & Company's key? A "AA" I think.

of
ubal.

Q And what letter or letters—

Mr. Pease: I object to your pointing to the witness what you want him to answer.

Mr. O'Connor: I object to the remark of counsel, and I wasn't pointing out the letters, I was pointing to his key.

Mr. Pease: Strike out the last part of that, I didn't mean it in that way.

Q What letter or letters in the key of the Lumbermen's Credit Association did you consider as equivalent to the letter "C plus" in R. G. Dun & Company's key? A "AA" I believe.

Q What does "C plus" in R. G. Dun & Company's key indicate? A One hundred and twenty-five to two hundred thousand.

Q What does "AA" in the Lumbermen's Credit As-
893 sociation indicate? A Seventy-five to one hundred thousand.

Q Would you consider seventy-five to one hundred thousand equivalent to one hundred and twenty-five to two hundred thousand?

Mr. Pease: Not what you consider, what you did.

A I don't say I did I had the key right before me, they were made right —

Mr. Pease: You mean you had the schedule before you?

A The schedule.

Q How did you determine, or by what did you determine whether the letters were equivalent or not? A Why, Mr. Stein would give me a rating and I would compare it, that is the only way I compared.

Q What rating would he give you? A Why, he gave me the capital rating.

Q In what way, in letters or in amounts? A In letters.

Q And you would compare it with that? A I would compare it with the Lumbermen's Credit Association book.

Q Did you have letters before you, this schedule that Mr. ——— A No, sir, he had the letters before him and he would compare it and give me the rating, then I would compare it and see if it was in there.

Q I don't quite understand you? Will you please take an instance, let us see just what was done? A Supposing I would call off the name, James Brown—

894 Q Have you found the name? A Why, no.

Q Well, find a name in the book of the Lumbermen's

Credit Association. A Here at Lancaster, New Hampshire, supposing I was to call off, W. B. Alden, of Lancaster, Mr. Stein would look it up in the R. G. Dun & Company book and compare the rating if it was there.

Q How could he compare the rating? A He had the schedule.

Q How could he make a comparison unless he got the rating that was in this book? A He compared it before he gave it to me; that is he had their ratings and the rating in our book.

Q He had whose ratings? A The R. G. Dun & Company ratings and the Lumbermen's Credit Association ratings.

Q How did he get the rating of the Lumbermen's Credit Association? A He had it right before him, he had a schedule.

Q What do you mean by the schedule? A He had—

Q The letters, the key of the Lumbermen's Credit Association? A The key, and R. G. Dun & Company's.

Q How could he make comparison unless he learned in some way what W. B. Alden was rated in the book of the Lumbermen's Credit Association? A I think you fail to understand me. I will just give you a little exhibit. Supposing I was to call that name off.

Q Yes. A It is rated "E" here in the—

895 Q —book of the Lumbermen's Credit Association? A Yes. I wouldn't tell him nothing about the rating, but he would look up our rating on our book.

Q Very well, suppose he found your rating— A —was "F", he would compare our "F" with the rating that he finds there, that is he would compare "F" and see if an "F" compares with any of their rating in their book.

Mr. Pease: Now what did Stein do then?

A Give me a rating.

Mr. Pease: What rating?

A The rating that he compared.

Q Suppose he found that W. B. Alden was rated "F" in Dun & Company's book, what did he do with the letter "F"? A If he found "F" he would compare "F" with any of their ratings, any of them, if it did not—

Q That is he would look to see what "F"— A —represented in their—

of
bal.

Q In their key? A In their key, he would give me that rating, and if it wasn't alike I would mark it "X".

Q I see. A That is the way we did it.

Q Let us get at this clearly. Take an actual case. Here is Thompson Manufacturing Company in the book of the Lumbermen's Credit Association, rated "AB". A Yes, I would call off that name, Thompson Manufacturing Company. Now I will take Stein's place, supposing I am Mr. Stein, I look up the Thompson Manufacturing Company and get the rating.

896 Q In Dun & Company's book? A Yes, sir. And I will have a key, that is, I will have a key of Dun & Company and the Lumbermen's Credit Association key right before me giving similars,—don't you see?

Q Giving similars, what do you mean by similars? A The ratings that are alike.

Q The letters of one which are equivalent to the letters of the other? A Yes.

Q Now you find this name in Dun & Company's book? A Yes, sir.

Q Let us suppose that the name is rated in that book "G"? A Yes.

Q What would you do? A If it is rated "G" in Dun & Company's book, I run down the line of G in our column and find what it amounts—or what it equals in the Lumbermen's Credit Association.

Q The letter to which it is equal? A Yes, sir, and I give it to the party, or he gives it to me.

Q He gives it to you? A Then I mark it accordingly.

Q Then you compare that letter which is given to you? A Yes, sir, with that rating in there.

Q In the book of the Lumbermen's Credit Association? A Yes, sir.

Q And if he said that "G" was equivalent to "AB" the rating that is marked in the book of the Lumbermen's
897 Credit Association what did you do? A If he gave me "AB"?

Q No, if he told you that "G" in Dun & Company's book was equivalent to "AB" in the book of the Lumbermen's Credit Association, and you found— A "AB"?

Q "AB"? A I would mark it similar.

Q If you found it different? A I passed it by and go on with the next. Sometimes Mr. Stein would do the marking while I simply read the name and the rating from Dun & Company's book and he would compare them. I would give him the rating from Dun & Company's book and he would compare the rating that he had with the schedule there and he would compare them and check them.

Re-cross Examination by Mr. Pease.

Q Well, then you worked to or from this schedule rather than from the keys, separate keys themselves? A From the schedule.

Q Isn't that right? A Why, yes, we worked from the schedule to compare.

Q That is to say, the schedule was made up from the two keys? A Yes.

Q That is right, isn't it? A Yes.

Q And when you found—you read the name from the Lumbermen's Credit Association book? A Yes.

Q Mr. Stein if he was using the Dun book would— A Compare the rating.

898 Q —would find out the rating that was given in the Dun book? A Yes.

Q That is, by the letter? A Yes.

Q Then he would take that letter and compare that with the schedule? A Yes.

Q And then would give you the letter of the Lumbermen's Credit Association key which came within that schedule? A Yes, and I would compare it.

Q And if the letter which Mr. Stein gave you from the schedule as being equivalent to the rating indicated by the letter from the Dun book, and the letter which Mr. Stein gave you was the same letter as appeared in the Lumbermen's Credit Association book, you checked it as being similar? A Yes, sir.

Q That is the way you did it, isn't it,? A Yes, sir

Re-direct Examination by Mr. O'Connor.

Q Mr. Hubal, you say you don't know what has become of this schedule? A Why, the last I saw of it, when we got

n of
ubal.

through with the work Mr. Stein took it, or had it, I don't know.

Q Do you remember now, of your independent knowledge, just what letters were on that schedule as being equivalent to one another? A I know some of them, yes.

Q Do you remember them all? A I remember them all, yes.

Q Do you remember, of your independent recollection
899 just what letters appeared on the schedule as equivalent to other letters? A I couldn't say about the As, but I know about C down. Wouldn't say about the A, because there was a change in them.

Q Your recollection is not distinct above C? A Yes, sir.

Q Above C, of R. G. Dun & Company? A We had two keys made out, one key had Dun & Company's ratings on the left hand side and the other had it on the right hand side, just changed about, that is in case we turned around on our work, use either key.

Re-cross Examination by Mr. Pease.

Q You say the schedule was changed as to the As? A I don't mean changed, but I say there was a change in them. That is the "A" in the Lumbermen's Credit Association amount to less or more. That is "AA" probably amount to less than ours, that is we may have a "C" for "AA".

Mr. O'Connor: Who prepared this schedule?

A Mr. Stein did.

Q State what letters in the Lumbermen's Credit Association key and what letters in the R. G. Dun & Company key were treated as similar in this schedule? A "H" in the Lumbermen's Credit Association equals "M" in R. G. Dun & Company. "G" equals "L" in the Dun & Company book. "EF" equals "K" in the R. G. Dun & Company book and "F" equals "J" in the R. G. Dun & Company book. "E"
900 equals "H" in the Dun & Company book, and "D" equals "F"—or rather "D" equals "G" in R. G. Dun & Company's book, and "BC" and "C" equals "F".

Mr. O'Connor: You better say "BC" in the Lumbermen's book, to distinguish.

A "BC" and "C" in the Lumbermen's Credit Associ-

ation book equals "F" in R. G. Dun & Company's book, and "B" equals "C plus" and "AB" equals—

Mr. O'Connor: "B" equals what?

A Equals "D".

Q What are you going to say, "B" equals "D"? A Yes. And "AB" equals "D plus", and "A" equals "C". I think that was it. I don't know the rest of them, how we had the schedule made out.

Adjourned until 2:30 o'clock P. M.

2:30 o'clock P. M.

Met pursuant to adjournment.

Present as before.

Mr. O'Connor: Let the record show that I ask Mr. Clancy to produce tomorrow morning before the Special Examiner, the same red bound book pertaining to the January, 1902 edition of the Lumbermen's Credit Association which was produced before Master Bishop.

Mr. Pease: I must ask Mr. O'Connor what use he proposes to make of it.

901 Mr. O'Connor: I may introduce it in evidence.

JERRY HUBAL recalled for further cross examination by Mr. Pease:

Q Mr. Hubal, will you look at the paper which I now show you, containing a number of letters, and state whether or not that is the schedule referred to in your examination which you and Mr. Stein used in the comparison of these two books? A That is the identical schedule we used.

Q And the identical piece of paper? A Yes, sir.

Mr. Pease: We offer this schedule in evidence

Q From whom did you secure this paper? A I got it from Mr. Stein.

Q The witness that was on the stand just before you? A Where did he get it from?

Q No, I say that is the witness who testified this morning before you took the stand? A Yes.

Mr. O'Connor: You got it from him since you testified this morning, did you?

A From him?

Q Yes. A Why, yes.

n of
ubal.

Mr. Pease: We offer this in evidence, the same being in letters and marks as follows, and marked Defendants' Exhibit A, November 4, 1902:

902		
	AA	AAAA
	A+	AAAA
	A	AAAA
	B+	AAAA
	B	AAA
	C+	AAA
	C	AA
	D+	A
	D	AB
	E	B
	F	C
	F	BC
	G	D
	H	E
	J	F
	K	EF
	L	G
	M	H

Q What do these letters in the first column indicate, or what are they? A They indicate the rating of R. G. Dun & Company, capital rating.

Q As used? A As used, yes, sir.

Q In their key? A Yes, sir.

Q And what is the second column, on the right hand side? A That is the rating key of the—capital rating of the Lumbermen's Credit Association.

Q Now what use was made of this schedule by you and Mr. Stein in the comparison of these two books? A Used it for comparison.

Q Well, in what manner? A Ascertaining the similarity of ratings.

Q How did you do it, or in other words, what if anything did you compare with this schedule? A The rating
903 called off from the R. G. Dun & Company book.

Q And what ratings were from the R. G. Dun & Company book compared with this schedule? A All the capital ratings.

Q As to what parties or concerns? A As to parties or concerns called off by myself.

Q From what? A From the Lumbermen's Credit Association.

Q Exhibit 9? A Yes, sir.

Mr. O'Connor: Weren't they sometimes called off by Stein?

A Yes, sir.

Q When the name was called off by Mr. Stein and you were doing the comparison, what did you do, what comparison did you make? A Why, I simply called off the—or rather, I gave him the rating in our reference book, in R. G. Dun & Company's book, that was all I gave him when he called off.

Q You gave the— A The rating in R. G. Dun & Company's book, when he called off.

Q That is when he read from the Lumbermen's Credit Association book? A Yes, sir.

Q What did he read? What part of the work did he read? A He called off the name.

Q No, but I mean what states or how much of the work did he do the reading? A Well, I couldn't say. At the beginning, at the time I was put on the work why I believe
904 he did the calling off, the latter part, I did. Most part of it, latter part. He did the comparing.

Q Mr. Stein did the comparing? A Yes, sir, that is according to the schedule, I did according to the rating there.

Q With this schedule? A Yes, sir.

Q And you did not make any of the comparisons then between the ratings given in Dun's book and this schedule? A Very few, if any.

Q What states did you assist Mr. Stein upon in making these comparisons? A I have got a memorandum here.

Q Now what memoranda are you referring to? A Mr. Stein's.

Q Then did you make any memoranda? A No, sir, I did not.

Q Where did you get that book? A Got that book from Mr. Stein.

Q When? A This morning.

Q Do you remember what states you assisted him upon, without referring to that book? A I remember some of them.

Q Name them. A I remember Missouri, Nebraska, New York, Oklahoma Territory, Ohio, Nevada, Indian Territory, Kansas, state of Illinois, I think, Kentucky, Oregon, Minnesota, New Mexico; that is about all I remember, may have been more or less.

Q Are you testifying from your recollection? A Yes, sir.

Q Independent of any memoranda? A Yes, sir.

905 Q Have you examined the book which Mr. Stein gave you with reference to these states since— A I did not.

Q Did you make or keep any memoranda of the result of the work which you did with Mr. Stein upon these books? A No, sir.

Q Did you do any of this work alone? A No, sir, always together.

Q Did you work with any one else than Mr. Stein? A No, sir.

Q What books did you and Mr. Stein have before you while you were doing this work? A Well, we had the Lumbermen's Credit Association book of January, 1902, and the R. G. Dun & Company book of September, 1901.

Q Did you have any other books before you? A No, sir.

Q Did you have this schedule before you? A Yes, sir, all the time.

Q What if any other memoranda or paper did you have before you? A May have had several scraps of paper in order to count up and figure.

Q Well, I mean were there any memoranda on? A No, sir.

Q Aside from that, which you made yourself? A No, sir.

Q Did Mr. Stein or you keep any memorandum or record of the result of your comparisons aside from that kept in the book which Mr. Stein gave you? A Not that I know of, that is the only book he had.

906 Q Well, did you make any memorandum in or upon anything else? A No, sir.

Q At the time you were doing the work? A No, sir.

Q Then the only thing you had before you, that you and Mr. Stein had before you— A By the way, I do recollect, he did have a piece of paper; he copied from the paper and put them in here.

Q And what was on the paper? A Why, he had the states as they are here, he had them in order.

Q And from what did he make that paper? A Why, we went along, he always put the total down.

Q Was that paper made up from the totals in this book Exhibit 9? A Why, I don't know whether he kept it there making a memorandum of all the totals he had in this book, but I know that he had a paper a little larger than this, and

he had a number of states and totals, and total of names in a book,—or in a state, and the totals that are not in the book and the total that were in the book. He had, I should say, about 24 states—two dozen states.

Q Now when you were reading names from the Lumbermen's Credit Association book, Mr. Stein would look up the rating of that name in the Dun book and compare it with this schedule? A Yes.

Q And call back to you the letter or letters of the Lumbermen's Credit Association key opposite the letter or letters, or letter and sign with which the party was rated in the Dun book? A Yes.

907

Q That is right, is it? A Yes.

Mr. O'Connor: Opposite the letter, Mr. Pease, you mean opposite the letters in the schedule?

Mr. Pease: I mean opposite the letter or letters or letter and sign in the first column of the schedule.

Q And then you would note whether the letter or letters opposite the name in the Lumbermen's Credit Association book was the same— A Yes.

Q —as that which he called back to you? A Yes, sir.

Q If it was the same you checked it as being the same? A Yes, sir.

Q If not the same, you did not— A Ignore it.

Q —do anything. As I understand it, Mr. Stein would call back to you the letter or letters in the second column of this schedule appearing opposite the letter in the first column which agreed with the rating given the party in Dun's book, is that right? A Yes.

Q What do the letters in the right hand column indicate as to the letters directly opposite in the left hand column? A Well, they are equivalent. They are the equivalent ratings of the R. G. Dun & Company ratings, that is all they are.

Q You mean— A They are the Lumbermen's Credit Association ratings equivalent to that of R. G. Dun & Company's ratings.

908

Q You don't know that to be a fact, do you? A No, I do not.

Q But that is the manner— A That is what I understand.

Q —in which the schedule was used? A Yes, sir.

Q The letters then in the right hand column were treated in this comparison as the equivalent to the rating given by

R. G. Dun & Company as indicated in the letter directly opposite? A Yes, sir.

Q In the left hand column? A Yes, sir.

Q When you have used the word equivalent, you mean the same as similar? A Similar or equal. Equal the same thing.

Q In your comparisons, in stating the result of your comparisons you have used the term, similar ratings. A Yes, sir.

Q And you mean by that the same as equivalent ratings? A Yes, sir.

Q When referring to this schedule. You don't mean by equivalent ratings, exact, do you?

Mr. O'Connor: I object, because the key will speak for itself.

A Don't say it is exact, no.

Q You don't mean exact? A No, sir, I do not.

Q If I understand correctly, the work which you and
909 Mr. Stein did, and the comparison which you made, were this schedule? A Yes, sir.

Q And nothing else? A Yes, sir.

Q And your comparisons were for, or as to similar ratings as indicated by this schedule? A Yes, sir.

Q And not as to exact capital ratings? A No, sir.

Q Or exactly the same capital ratings? A No, sir.

Q Do you know who made this (referring to the schedule), in whose hand writing it is? A Mr. Stein's writing.

Q Did you and Mr. Stein compare anything else besides similar capital ratings as indicated by this schedule? A Yes, compared blank ratings and references.

Q That you explained this morning? A Yes.

Q But nothing else? A Nothing else, no, sir.

Re-direct Examination by Mr. O'Connor.

Q Mr. Hubal, this morning in your cross examination you were asked several times as to what letters of R. G. Dun & Company's ratings, and what letters of the ratings of the Lumbermen's Credit Association you considered as equivalent, and you seemed to give different answers. As I understand you, the letters which you took as equivalent appear in this schedule, do they? A Yes, sir.

Q Now look at the schedule and tell us what letters of

R. G. Dun & Company, and what letters of the Lumber-
910 men's Credit Association you considered as equivalent to each other in determining the similarity of ratings in the two books. Read them off. Begin at the beginning, go right through. A Shall I read the R. G. Dun & Company ratings first?

Q Read R. G. Dun & Company's letters, then read the letters of the Lumbermen's Credit Association which you considered as equivalent to them.

Mr. Pease: For instance, we considered AA as equivalent—

Mr. O'Connor: That is right.

Mr. Pease: Better put it, as indicated by that schedule, not so much what he considered, as what is indicated in that schedule.

Mr. Atwood: What he treated.

Mr. O'Connor: Yes, what he treated or considered as equivalent in fixing the similarity of the ratings in the two books.

A I considered and treated "AA" of Dun's as similar or equivalent to "AAAA" of the Lumbermen's Credit Association; "A plus" of Dun's as similar or equivalent to "AAAA" of the Lumbermen's Credit Association; "A" of Dun's as similar or equivalent to "AAAA" of the Lumbermen's Credit Association; "B plus" of Dun's as similar or equivalent to "AAAA" of the Lumbermen's Credit Association; "B" of Dun's as similar or equivalent to "AAA" of the Lumbermen's Credit Association; "C plus" of Dun's
911 as equivalent to "AAA" of the Lumbermen's Credit Association; "C" of Dun's as similar or equivalent to "AA" of the Lumbermen's Credit Association; "D plus" of Dun's as similar or equivalent to "A" of the Lumbermen's Credit Association; "D" of Dun's as similar or equivalent to "AB" of the Lumbermen's Credit Association; "E" of Dun's as similar or equivalent to "B" of the Lumbermen's Credit Association; "F" of Dun's as similar or equivalent to "C" of the Lumbermen's Credit Association; "F" of Dun's as similar or equivalent to "BC" of the Lumbermen's Credit Association; "G" of Dun's as similar or equivalent to "D" of the Lumbermen's Credit Association; "H" of Dun's as similar or equivalent to "E" of the Lumbermen's Credit Association; "J" of Dun's as similar or equivalent to "F" of the Lumbermen's Credit Association; "K" of Dun's as similar or equivalent to "EF" of the Lumbermen's

Credit Association; "L" of Dun's as similar or equivalent to "G" of the Lumbermen's Credit Association; "M" of Dun's as similar or equivalent to "H" of the Lumbermen's Credit Association.

Q You referred to certain footings in the book of the Lumbermen's Credit Association which you computed at the end of the states or some of the states, I believe? A Yes.

Q When were those footings made with reference to the time of the examination? A Why, I couldn't tell you exactly when they were made; they were made at the time

912 when we got through with one state.

Q As soon as you counted up a state? A Yes, sir.

Q You put the footing at the end of the state? A Yes, sir.

THEODORE E. STEIN recalled for further cross examination by Mr. Pease.

Q Mr. Stein, in making these comparisons to which you have testified, did you use a schedule? A A thing like that, you mean (indicating).

Q Yes, this one; is this the schedule (referring to Defendant's Exhibit A)? A Yes, sir.

Q In whose hand writing is this? A Mine.

Q From what did you make that paper, that schedule? A From the two rating keys of the two agencies.

Mr. O'Connor: What two rating keys? A The rating keys in the front part of each book.

Mr. O'Connor: What books?

Q You mean the books you examined? A The books I examined, the September, 1901 Dun Book and the January, 1902 Lumbermen's book.

Q Did you make it yourself? A Yes, sir.

Q Did you originate the schedule? A That is my own work.

913 Q I know, but who suggested or directed you to make it? Who suggested that you make it? A I made it in order that I might better do the work without any—

Q Who did you talk with about it? A Mr. Gallagher, the Chief Clerk.

Q Any one else? A No, sir.

Q Who suggested this arrangement? A No one, that is my own.

Q It is your own original idea? A No, sir:
Q Whose idea was it? A I don't understand what you mean by this arrangement.
Q I mean as to the arrangement of rates? A As to what the equivalent of these ratings are?
Q Yes, that is right, whose idea was that? A Mr. Gallagher and I agreed on these ratings as being practically what they equal. What our ratings equal in the ratings of the other.
Q You and Mr. Gallagher agreed on that schedule of similarity in ratings yourselves? A We did, as far as this "BC" and "C" is concerned, I am not quite positive about the "AAAA" ratings.
Q Well, who suggested that? A I couldn't say.
Q Did you talk with any one else with reference to this schedule, or the making of this schedule? A No, sir.
Q How about the "B" rating in the Lumbermen's Credit key?
914 Mr. O'Connor: What is the question?
Mr. Pease: As being equivalent to "E" in the Dun rating, how he come to determine or decide that, or how did he decide that? A Well, their "B" rating being included in our "E" rating, was practically the same thing, I suppose that was—I understood that myself without being told.
Q The Lumbermen's Credit "B" rating is not included. A Yes, it is; ours is twenty to thirty-five and theirs is from twenty-five to thirty-five, therefore our rating would include.
Q That is the reason you consider it similar? A Yes.
Q Because the one included the other? A Yes, sir.
Q Notwithstanding there was a difference of $5000 in the capital rating represented? A I called them similar.
Q You called them similar? A Yes.
Q And who determined the "AA" in the Lumbermen's Credit key was equivalent to "C" in the Dun key? A I think that was decided on between Mr. Gallagher and myself, I am not—
Q They are not similar, are they?
Mr. O'Connor: I object because the key will speak for itself, or rather the schedule, as well as the key.
A They are similar in the same way that the others, that the two I have just mentioned are.
Q What is the difference in the capital rating represented

by these two, that is by "AA" Lumbermen's Credit
915 Association key and "C" in the Dun key?

Mr. O'Connor: I object because the schedule and the keys speak for themselves.

Q I mean net difference in capital, in amount. A You can figure that up yourself.

Q I know I can, but can you?

Mr. O'Connor: Same objection.

A Certainly.

Q Will you please state it?

Mr. O'Connor: Same objection.

A There is a difference in the highest capital rating of $25,000.

Q That is a difference then in dollars and cents in the capital rating, isn't it?

Mr. O'Connor: Same objection.

A In the highest rating given, couldn't say that was the difference in the ratings to my mind.

Q What would be the difference in the ratings, according to your mind? A Well, we called them practically the same.

Q Well, I am talking about actualities now, and not similarities.

Mr. O'Connor: You asked him what he had in his mind.

Q Well, what would be the actual difference in capital ratings in these two instances?

Mr. O'Connor: Objected to, they speak for themselves.

916 Q According to your mind? A I wouldn't care to give an estimate of the actual difference.

Q Well, your Dun is seventy-five to one hundred and twenty-five, isn't it? A Yes, sir.

Q And the Lumbermen's Credit rating is seventy-five to one hundred thousand, isn't it? A Yes, sir.

Q And the difference between one hundred and twenty-five thousand and one hundred thousand, is twenty-five thousand, isn't it? A Exactly.

Q Would that be the difference between the two capital ratings then?

Mr. O'Connor: He has already answered that question, Mr. Pease, I object.

A That is the difference between those two numbers, yes, sir.

Q Between those two amounts? A Between those two amounts.

Q And those two amounts are the amounts,—are the maximum amounts represented by those two ratings, are they not? A Yes, sir.

Q How was the "AAA" in the Lumbermen's Credit key determined upon as being equivalent to the "B" and the "C plus" rating in the Dun key, as shown by this schedule? A They both stand for over $100,000.

Q "C plus" in the Dun key indicates a capital rating of one hundred and twenty-five thousand to two hundred
917 thousand, does it not? A Yes, sir.

Q Then there is a difference of $25,000 in the minimum rating indicated by "C plus" in the Dun key and "AAA" in the Lumbermen's Credit key, is there not? A There is no minimum rating given in the Lumbermen's Credit key in that case.

Q There is not? A No, sir.

Q What does "AAA" indicate? A Over $100,000.

Q What is the minimum rating then?

Mr. O'Connor: I object because the keys speak for themselves.

A The minimum rating in that case would be—

Q $100,000 wouldn't it? A Something less than $100,000 yes.

Q Would it be less than a hundred thousand? A No, be practically a hundred thousand.

Q Then there is a difference in those two ratings,—minimum difference of $25,000 in those two ratings, isn't there?

Mr. O'Connor: Objected to because the keys will speak for themselves.

Q According to this schedule? A Yes, but that difference was in favor of the Lumbermen's Credit Association.

Q And you counted them in this comparison as similar? A Yes, sir, they are practically similar.

Q Supposing a man was reported as worth $110,000
918 how would he be rated according to the Dun key?

Mr. O'Connor: I object because the keys will speak for themselves.

A Not having done any rating I couldn't say, but I should suppose that it would be between $75,000 and $125,000.

Q What would that be? A That would be the letter "C".

Q How would that be treated in the Lumbermen's Credit key? A At $110,000?

Q Yes. A As "AAA".

Q Then in that case the ratings would not be similar would they? A No, sir; that is according to this schedule we have drawn up, but the dissimilarity would be in favor of the Lumbermen's Credit Association.

Q Now why would it be,—or how would it be? A Because if such a case occurred there would be no doubt but what the ratings would be similar, but we didn't call them similar.

Q How would they be similar? A Because they are both rated for $110,000.

Q Then a party reported to be worth $150,000 would be rated "C plus" in the Dun key? A Probably, yes.

Q And a party reported worth $110,000 would be rated "AAA" in the Lumbermen's Credit Association key, would he not? A Might be rated "AAA" or "AAAA", they might call that very high.

919 Q Well, why do you say he might be rated "AAAA"? A Because that is what I take "AAAA" to mean, very high rating, I should consider that a very—

Q You should consider a difference of $10,000 over $100,000 to make it a very high rating, would you? A I don't know just how they rate.

Q Supposing a man was worth $190,000, reported worth $190,000, he would be rated as "C plus" in the Dun key would he not? A Yes, sir.

Q And if he was reported worth $100,000 he would be rated in the Lumbermen's Credit key "AAA", wouldn't he? A I don't think so, not at $100,000.

Q Well, take a hundred and five.

Mr. O'Connor: Objected to because it doesn't appear that the witness knows of his own knowledge.

A I don't know how they rate, so I couldn't say.

Q That would probably be the rating, wouldn't it?

Mr. O'Connor: Objected to, calls for a mere conclusion of the witness.

A I wouldn't care to state; one of their men probably could say just how they rate, what that rating would be worth; how that quantity would be rated.

Q Isn't that what the key indicates?

Mr. O'Connor: Objected to, because the key speaks for itself.

A No, the key simply indicates over $100,000.

920 Q Wouldn't $105,000 be over $100,000? A There are some ratings higher than that.

Q Answer my question,—would it be over $100,000? A Certainly. A million dollars would also be over a hundred thousand, I don't believe they would rate it "AAA".

Q Then with a possible difference of $90,000 in the capital rating of a party, you treated them as similar in this comparison, did you not? A Well, according to our possibilities of what the actual values might have been we treated those ratings as similar; we had no specific knowledge of what the actual amounts were.

Q Then according to these keys Mr. Stein, and this schedule by which you made the comparisons there would be a difference of $90,000 in the capital ratings of a concern as indicated by the "C plus" of the Dun key and the "AAA" of the Lumbermen's Credit key, which you treated as similar?

Mr. O'Connor: I object because the keys will speak for themselves.

Q That is right is it not, Mr. Stein? A The same would be true of any other rating.

Q No, I want you to answer that question, Stein. A Well, I didn't understand it that way, and I don't now.

Q But you understand my question? A Yes, certainly.

Q And you can answer it? A That is why I say I didn't understand the matter that way and I don't now.

921 Q Didn't understand what matter? A That there could be a difference of that much in the rating?

Q You didn't understand that to be possible at the time you made the comparison? A No, and I don't understand it that way now.

Q Well, don't you see, from an examination of the two keys that that is possible?

Mr. O'Connor: I object, because the keys will speak for themselves and are the best evidence.

Mr. Pease: If this witness wants to be fair on the record he can answer that question. He says he didn't understand it then; does he understand it now? A I said, I don't understand it now.

Q You don't? A No.

Q "C plus" in the Dun key indicates a capital rating of $125,000 to $200,000 doesn't it? A Take one of these other ratings.

Q I am talking about this rating, then we will take up another if you want to; Mr. O'Connor will give you a chance.

of E. That is right, isn't it? A That this equals that (indicating)? Certainly.

Q That "C plus in the Dun key indicates a hundred and twenty-five,—a capital rating of a hundred and twenty-five to two hundred thousand dollars? A Yes, sir.

Q And the "AAA" in the Lumbermen's Credit Association key indicates a capital rating of over $100,000? A 922 Yes, sir.

Q So that a person worth $105,000 would be rated according to the Lumbermen's Credit key "AAA", wouldn't he? A Might be.

Q Might be? And why wouldn't he be rated "AAA" according to this key?

Mr. O'Connor: I object, because it isn't shown that the witness knows how you rate,—how the Lumbermen's Credit rates.

Q Didn't you know at the time you made these comparisons? A What?

Q How the Lumbermen's Credit rated them? A By what terms they rated them?

Q Yes. A No.

Q Well now, assuming that a person worth $105,000 was rated by the Lumbermen's Credit Association at "AAA",—understand? A Yes.

Q There might be a difference of $90,000 in the capital rating of a party rated "AAA" in the Lumbermen's Credit Association and "C plus" in the Dun key which you rated as similar in this comparison, is that right? A Yes, sir.

Q Now take— A Now take one of these ratings here (indicating).

Q All right A Take the rating "D plus" for instance.

Q Yes, that is the same. A That is the same. A man 923 might be rated in Dun's book as worth $51,000 and a man might be rated in this book as worth $74,000 and still we called them similar.

Mr. O'Connor: But do the books rate the parties for specific amounts?

A They do not, no, sir.

Mr. O'Connor: Then you would not find $51,000 in one book or $74,000 in the other, would you?

A No, sir.

Q But a person reported as worth $74,000 or $51,000 or anywhere between that would have to be rated as "D plus"

in the Dun book and as "A" in the Lumbermen's Credit book, would he not? A I should suppose so.

Q There isn't any other letter that would indicate the rating, is there?

Mr. O'Connor: Objected to, the keys speak for themselves.

A Apparently not.

Q Mr. Stein, what books did you have before you when you made this comparison? A The September, 1901 book of R. G. Dun & Company, and January, 1902 book of the Lumbermen's Credit Association.

Q And what else? A That is all.

Q And this schedule? A And the schedule, yes. You asked what books.

Q And I said, what else.

924 Mr. O'Connor: And the keys?

A And the schedule.

Q Now as to the work in which Mr. Hubal assisted you, how did you do the work? A I have explained that a couple of times.

Q I would like you to explain it again, Mr. Hubal didn't explain it the way you did. I want to see which one is right. A The names were read off.

Q Take for instance, supposing Mr. Hubal had the Lumbermen's Credit Association book, what did Mr. Hubal do? A He read the name of the party; the name of the town first, then the name of the party appearing in that town.

Q Anything else? A Nothing else.

Q Then what did you do? A Then I looked the name up in R. G. Dun & Company's book.

Q Now what else did you do? A Compared the ratings.

Q What ratings? A The ratings in the—let us see.

Q In the Dun book? A Yes, compared the ratings in the Dun book.

Q With what? A With this key.

Q With what? A With this schedule.

Q Exhibit A, of this date? A A of this date, yes, sir.

Q And then what did you do? A And gave him the equivalent of the rating in the R. G. Dun & Company book.

925 Q Well, in what manner did you give it to him,—give him the equivalent in letters? A By speaking to him.

Q Now don't be cute. A No, that wasn't cuteness, that is the way I understood your question.

Q Did you give it to him in letters? A Yes.

n of re E.

Q Just the letters? A That is the only way it could have been given.

Q You might have given it to him in dollars and cents, couldn't you? A O, I suppose—

Q You gave it to him in the letters? A Yes, gave it to him in the letters, the rating.

Q What equivalent did you give him, or what letters did you give him? A Just what there are on the schedule.

Q Well, you didn't give them all? A Whatever one happened to be equivalent to the rating in the book of R. G. Dun & Company.

Q As or according to what equivalent, according to what, this schedule? A According to that schedule.

Q And then, if I understand you correctly, Mr. Hubal read the name? A Supposing the case where he was reading the names.

Q He read the name, you looked up that name in Dun's book, compared the rating in Dun's book with this schedule, Exhibit A, and called back to Mr. Hubal the equivalent rating or letter, according to this schedule? A Yes, sir.

Mr. O'Connor: Equivalent rating or letter of the 926 Lumbermen's Credit Association.

Mr. Pease: Yes.

Q According to this schedule? A Yes, sir.

Q And you mean by equivalent, the same as you do by the term similar, which you have used in giving the result of your comparisons, do you not? A Yes, sir, that these letters opposite each other are called similar ratings, (Referring to schedule).

Q Did you compare the rating given in Dun's book with anything else besides this schedule? A No. When I was reading from the other book I compared it with this same schedule transposed. While I had Dun's book I used this schedule, Dun's ratings in the front column.

Mr. O'Connor: You did the comparison?

A Yes, I did the comparison of the ratings.

Q According to this schedule, you mean? A Yes, certainly.

Q Will you take this schedule, Exhibit A, and state the amounts in dollars and cents which the letters in each column indicate, the capital rating?

Mr. O'Connor: I object because the keys speak for themselves.

Q And state the capital rating indicated by the letters in

each column according to the Dun key and the Lumbermen's Credit key respectively.

927 Witness refers to the keys of R. G. Dun & Company and the Lumbermen's Credit Association appearing in their respective books, and makes tabulated schedule from amounts shown in same, as follows:

	R. G. D. & Co.		L. C. A.
AA	(over $1,000,000)	AAAA	(very high)
A+	($750,000 to $1,000,000)	AAAA	(very high)
A	($500,000 to $750,000)	AAAA	(very high)
B+	($300,000 to $500,000)	AAAA	(very high)
B	($200,000 to $300,000)	AAA	(over $100,000)
C+	($125,000 to $200,000)	AAA	(over $100,000)
C	($75,000 to $125,000)	AA	(75,000 to $100,000)
D+	($50,000 to $75,000)	A	($50,000 to $75,000)
D	($35,000 to $50,000)	AB	($35,000 to $50,000)
E	($20,000 to $35,000)	B	($25,000 to $35,000)
F	($10,000 to $20,000)	C	($15,000 to $25,000)
F	($10,000 to $20,000)	BC	($10,000 to $15,000)
G	($5,000 to $10,000)	D	($5,000 to $10,000)
H	($3,000 to $5,000)	E	($3,000 to $5,000)
J	($2,000 to $3,000)	F	($2,000 to $3,000)
K	($1,000 to $2,000)	EF	($1,000 to $2,000)
L	(less than $1,000)	G	($500 to $1,000)
M	(less than $500)	H	($100 to $500)

Q Mr. Stein, in making this comparison did you take into account the ratings indicated by the numbers "89" according to the Association key? A The number "89"?

928 Q Yes, appearing after a name. A No. That had nothing to do with the capital rating, therefore we didn't take any account of it.

Q Did you take any account of the ratings indicated by the figure "7"? A Didn't take any account of any figures that I can remember now, it was simply the letters showing the capital ratings.

Q Did you take any account of the rating "100" appearing in the— A I answered that yesterday.

Q You included that in the blank ratings? A Yes, sir; no capital rating shown.

FRANK J. GALLAGHER called as a witness on behalf of complainant, being first duly sworn, testified as follows:

Direct Examination by Mr. O'Connor.

Q What is your name? A Frank J. Gallagher.

Q What is your occupation? A Clerk for R. G. Dun & Company.

Q How long have you been in their employ? A About ten months.

Q Did you do any work in comparing any books of the Lumbermen's Credit Association with any books of R. G.
929 Dun & Company? A Yes, sir, Mr. Kramer and I compared their July book, 1901, with the March book of R. G. Dun & Company, of the same year.

Q What March book? A 1901.

Q Tell us the first state which you compared in the two books? A The first state was Alabama.

Q In what respect did you compare the names in that state? A With the exception of the first three states I used the Lumbermen's Credit book and Mr. Kramer used the R. G. Dun book.

Q I am not asking you just now how you made the comparison, but in what respect, or for what purpose did you make the comparison? A For the purpose to find out how many ratings were similar.

Q In the two books? A In the two books.

Q How did you make the comparison? A With the exception of the first three states I called off the name from the Lumbermen's Credit Association book and he compared with the book of R. G. Dun & Company and called off the equivalent rating of the Lumbermen's Credit Association to me, and then if it was similar I checked it similar, if not I didn't mark at all.

Q Did you use any memorandum of any kind in making the comparison? A We used a key here that was given us by Mr. Stein.

930 Let us see the key, if you please.

Mr. Pease: You mean schedule, don't you?

A Yes, schedule, comparison between the two keys.

Q It was a schedule similar to the schedule that was used by Mr. Stein and Mr. Hubal in their comparison, is it? A I

should think it was, yes, I don't know for certain. It was made by Mr. Stein for us.

Mr. Pease: I suppose this ought to be objected to as immaterial, incompetent and irrelevant, all of this.

Mr. Atwood: All that testimony.

Q When you had charge of the reference book of the Lumbermen's Credit Association and Mr. Kramer had charge of R. G. Dun & Company's reference book you called off the names from the book of the Lumbermen's Credit Association? A Yes, sir.

Q What did Mr. Kramer do? A He looked the name up in the book of R. G. Dun & Company.

Q After finding the name in R. G. Dun & Company's book what did he do? A He called off the equivalent rating to R. G. Dun & Company that the Lumbermen's Credit Association—

Q How did he determine the equivalent rating? A By referring to this schedule that I showed you.

Q Well, in the schedule there seem to be two rows of letters. A Yes, sir.

Q What are the letters in the first row? A The let-
931 ters in the first row on the left.

Q Yes. A They are the Lumbermen's Credit Association.

Q What are the letters in the second row? A They are R. G. Dun & Company.

Q And what letters did you treat as equivalent to each other,—the letters in one row which are opposite the letters in the other row? A Yes, sir.

Q So that if he found a letter in R. G. Dun & Company's book or a rating given there to the name for which he searched, he looked for that rating in this schedule, did he? A Yes, sir.

Q In the R. G. Dun & Company column? A Yes, sir.

Q Then how did he ascertain the equivalent? A By looking opposite.

Q Taking the letter in the schedule opposite that letter? A Yes, sir.

Q After ascertaining the equivalent letter what did he do? A He called it off to me.

Q Then what did you do? A I compared it with the Lumbermen's Credit.

Q With the rating given to the name in the Lumbermen's? A Yes.

Q And what did you do after making the compari-
932 son,—how did he make the comparison? A He called it off to me and I compared it by looking at the rating in the Lumbermen's Credit Association book.

Q If you found it the same? A If it was the same I put a check, a cross mark to the left.

Q Have you the book which you examined, the book of the Lumbermen's Credit Association, with which you made the comparison? A I haven't it, no; I thought it was here somewhere.

Q Is this book, marked Complainant's Exhibit 8, October 31, 1902, the book of the Lumbermen's Credit Association with which you made the comparison? A Yes, sir, that is the book.

Q If you found the letter which he gave you to be the same as the letter in the Lumbermen's Credit Association book, how did you mark it? A With an "X" like that (indicating).

Q On the left of the name? A Yes.

Q In this book I notice certain marks on the right of certain names, strokes, what are they, do you know? A Those are the names that do not appear in the R. G. Dun book.

Mr. Pease: Dashes?

A Yes, straight lines.

Q What state did you first examine? A The state of Alabama.

Q What was the result of that examination? A We found
848 names, of which 158 were similar, 370 were not on
933 R. G. Dun's book.

Q How many were in both books? A We didn't keep a record of that.

Q You kept a record only of the total number of names in the book of the Lumbermen's Credit Association, the number of names that appeared in the book of the Lumbermen's Credit Association but did not appear in R. G. Dun & Company's book? A Yes, sir.

Q And the number of names that were similar in both books? A The number of ratings that were similar.

Q 848 represents the total number of names in the state of Alabama in the book of the Lumbermen's Credit Association? A Yes, sir.

Q What was the next state you examined? A Arizona.

Q What did you find with reference to that territory? A 58 names.

Q Where? A In the Lumbermen's Credit Association book.

Q The total number in that state? A The total number of names, yes, sir, 11 of which were not in the R. G. Dun book.

Q Did you find any of them similar? A 19 similar.

Q Bearing similar ratings. What was the next state you examined? A Arkansas, in that there was 952 names, 372 of which were not on R. G. Dun's book and 229 similar ratings.

934 Q 952 is the total number of names in that state in the book of the Lumbermen's Credit Association? A Yes, sir.

Q What was the next state you examined? A Next state was California.

Q What did you find in that state? A We found there 1141 total number of names in the Lumbermen's Credit Association book; 312 were not on the R. G. Dun book and 416 similar ratings.

Q What was the next state you examined? A Colorado.

Q Go right on, if you please, and give us the result of your examination with reference to each state that you examined. A Next state was Colorado; found there a total of 310 names in the Lumbermen's Credit Association book; 103 were not in R. G. Dun's book and 85 similar ratings.

Next state was Connecticut, we found there a total of 577 names in the Lumbermen's Credit Association book, 140 of which were not on R. G. Dun's book and 146 similar ratings.

Next state was Delaware, found there 159 names, total, in the Lumbermen's Credit Association book; 42 were not on R. G. Dun's book and 45 were similar ratings.

The next was the District of Columbia; we found there total of 43 names in the Lumbermen's Credit Association book, 11 of which were not on R. G. Dun's book and 10 similar ratings.

935 Next is the state of Florida, found there total of 437 names in the Lumbermen's Credit Association book, 167 of which were not on R. G. Dun's book, and 127 similar ratings.

Next state was Georgia, found there total of 1097 names in the Lumbermen's Credit Association book, 494 of which were not on R. G. Dun's book and 230 similar ratings.

Next was Idaho, found there total of 207 names in the

Lumbermen's Credit Association book, 99 of which were not on R. G. Dun's book, and 38 similar ratings.

Next was Indiana, we found there total of 2269 names in the Lumbermen's Credit Association book, 499 of which were not on R. G. Dun's book, and 594 similar.

Q Next state we examined was Indian Territory; we found there total of 197 names in the Lumbermen's Credit Association book, 62 of which were not on the R. G. Dun book, and 62 similar ratings.

Next state was Iowa; we found there 1738 names in the Lumbermen's Credit Association book, 346 of which were not on the R. G. Dun book, and 796 similar.

The next state was Kansas, found there total of 916 names in the Lumbermen's Credit Association book, 161 of which were not on the R. G. Dun book, 412 similar ratings.

Next state was Kentucky, found there total of 1244 names in the Lumbermen's Credit Association book, 539 not on the R. G. Dun book and 258 similar ratings.

936 Next state was Louisiana, found there total of 527 names in the Lumbermen's Credit Association book, 198 of which were not on R. G. Dun's book, and 146 similar ratings.

Next state was Maine; found there total of 1306 names in the Lumbermen's Credit Association book, 531 of which were not on R. G. Dun's book and 268 similar ratings.

Next state was Maryland, we found there total of 627 names in the Lumbermen's Credit Association book, 154 of which were not on R. G. Dun's book; found 163 similar ratings. That is as far as we counted.

Q You were still at work on the comparison when you were subpoenaed? A Yes, sir.

Q To come and testify in the case? You haven't yet completed your work? A No, sir.

Q How much longer would it take you to complete your work? A Well, that I can't state definitely as to that, we did on an average of about three states a day.

Q What is your best judgment as to the length of time it would take you to complete your work? A Well, I should say it would take about two weeks.

Q You say that you found certain names in the book of the Lumbermen's Credit Association which you didn't find in R. G. Dun & Company's book? A Yes, sir.

Q How were those names classified, did they belong to any

particular lines or classes of business that didn't ap-
937 pear—that R. G. Dun & Company don't publish in their book? A I don't know as to that, I didn't notice that those names that did not appear were classified or whether they were not classified.

Mr. O'Connor: We will offer that schedule in evidence, the schedule to which the witness referred in his testimony, and ask the reporter to mark it.

Schedule marked Complainant's Exhibit 34, November 4, 1902, and is as follows:

	AAAA	AA	
	AAAA	A+	
	AAAA	A	
	AAAA	B+	Started Oct 24
	AAA	B	
	AAA	C+	Dun March 1901
	AA	C	July 1901
y y	A	D+	L C A
	AB	D	
	B	E	
	C	F	
	BC	F	
	D	G	
	E	H	
	F	J	
	EF	K	
	G	L	
	H	M	

938 Q Did you notice, for instance, that Lumbermen's Credit Association carries in its book brokers in the lumber business, but that they are not carried in the book of R. G. Dun & Company? A No, sir, I did not notice it.

Q What are your duties with R. G. Dun & Company? A Answering tickets for reports, inquiries for reports.

Cross-Examination by Mr. Pease.

Q The only comparison which you made was as to the capital ratings, was it not? A Yes, sir, we paid no attention to credit ratings.

Q You made no examination as to the credit ratings? A No, sir.

Q They may all differ? A As far as I know.
Q Credit or pay ratings? A Yes, as far as I know.
Q What did you include in the similar ratings?
Mr. O'Connor: I object because the schedule speaks for itself.
A We included similar reference ratings and similar capital ratings.
Q Anything else? A I think that is all.
Q How about blank ratings? A Well, we counted all blank ratings as similar, that is when they were blank in both books.
Q That is, when there was no capital rating given in
939 any book you treated those as similar? A Yes.
Q Such names as similar? A Yes.
Q And what did you treat as similar reference ratings? A When both the Lumbermen's Credit Association book and the R. G. Dun book referred to a certain point as being headquarters.
Q Whether it was in the same wording or not? A Yes, sir.
Q That is, you found in the Lumbermen's Credit book references, "purchasing department" at certain places? A We considered them headquarters.
Q Although you found no such reference as that in the Dun book, did you? A No, sir.
Q Yet you counted them or treated them as similar? A The Dun book says—
Q Answer my question.
Mr. O'Connor: Let him state.
Mr. Pease: I want him to answer my question first, then he can state.
Question read.
A Yes, sir.
Q Now if you wish to make a statement—. A The Dun book says, see such and such a place for headquarters, that shows that that point is headquarters.
Q Well, the Lumbermen's Credit book also has the
940 same reference, has it not, in some instances? A I failed to see it in going through the book.
Q Didn't you discover any such? A I didn't discover any such, no.
Q Then there are no such references in the states which you compared or examined? A I wouldn't say positively

there were none, as far as my recollection goes there were not.

Q Did you make any examination as to the capital rating given the party at a town designated as headquarters? A No, sir. You mean when it referred—

Q Yes. A No, sir.

Q Then you still counted them as similar rating notwithstanding the capital rating at the town given as headquarters might have been entirely different? A Yes, sir.

Q Take the state of Alabama, you say you found 158 similar ratings; that included similar capital ratings according to this schedule, similar reference ratings, and blank ratings, did it not? A Yes, sir.

Q How many of those were similar capital ratings according to this schedule? A I couldn't form any idea without going over the book again.

Q How many were similar reference ratings? A I couldn't tell you that.

Q Or blank ratings? A Or that, either.

941 Q Can you tell in the case of any state? A No, sir.

Q In this comparison did you take into account any rating indicated by a figure? A No, sir.

Q Simply and only the capital ratings indicated by letters? A Yes, sir.

Q Did you know at the time you made this examination whether or not the ratings indicated by figures in any case affect the capital rating as given in the Credit book? A In what way affect it?

Q Well, in any way; did you know whether they did or not? A They affected the credit but not the capital.

Q I asked you if you knew whether they affect or referred in any way to the capital rating? A No, I shouldn't think they would.

Q Well, do you know? A No.

Mr. O'Connor: I object, he has answered the question.

Q Did you know at the time you made this examination or comparison? A No.

Q Take a name, for instance, that was rated "83 1" or "89 1" how did you treat that? A We didn't pay any attention to the figures at all.

Q How did you treat— A We simply compared it as an "A" rating.

Q As an "A" rating? A Yes, didn't you say "A 3"?

Q No, I said "89 1" A "89 1"?

942 Q Yes. A Without any capital rating?

Q Without any letter. A Counted that a blank rating.

Q Counted that a blank rating? A Blank rating.

Q And you treated all ratings indicated by figures as blank ratings, did you? A Yes, sir.

Q You found names in Dun's book in the lumber trade or kindred branches that were not in the Lumbermen's Credit book, did you not? A I couldn't say as to that because I only handed one state of the Dun book, the balance I had in my possession the Lumbermen's Credit Association book.

Q Which state was that? A That was the state of Arizona.

Q You didn't consider or make any comparison as to the different classifications of the lumber business as given in the two books, did you? A No, sir.

Q So far as you know there may have been some names in the Lumbermen's Credit Association book shown reported as in the lumber business or some of its associated lines, which appeared in Dun's book as in some other line of business? A As far as I know, yes.

Q You made no comparison of the two books as to that point? A No.

Q You simply called off the names? A Yes.

Q From this Lumbermen's Credit book? A Yes, from this book.

943 Q And if that name was found in the Dun book then the equivalent rating according to this schedule was called back to you by Mr. Kramer? A Yes. As to whether he compared the business or not, I don't know, I can't tell that.

Q Well, in the state which you compared, Arizona, did you make a comparison of the business in which the parties were engaged? A No, not in the state of Arizona.

Q In reading from this book did you read anything beside the name? A At times I did call off the business where there was a number of people of that name engaged in business at that point, I called off the business. Mr. Kramer may say that he had several parties by that name.

Q In the Dun book? A Yes, then I would call off the business.

Q You didn't read the business, you didn't read anything

but the name except in cases where Mr. Kramer called for it? A No, sir.

Q Then as far as you know, the classification of the business may have been entirely different? A As far as I know, yes.

Q Who did you talk with first about doing this work? A With Mr. Stein, I think it was.

Q And when was that? A That was on Friday, October 24.

Q What did he say to you at that time? A He told me what I was to do, showed me how to compare the two books.

944 Q What did he say to you? A I have no recollection of the conversation.

Q What did he tell you to do? A To compare the two books; he gave the two books to Mr. Kramer and I, told us to compare them and made us out a copy of his schedule that was used by him.

Q Told you to compare what? A The ratings, the capital ratings in the two books.

Q Was that all? A That is my impression of it, yes, sir.

Q That is all you did? A Yes.

Q And did he give you this schedule at that time to work by? A He made us a copy of his schedule.

Q And that is this paper which you have produced? A That paper there, yes (indicating).

Q Supposing there was a difference in the spelling of the names of individuals or towns, did you make any comparison as to that? A Yes, sir, if the name was spelled a little different, if it was a difference of a letter, an "a" for an "o", why we counted that similar if the rating was similar in the two books.

Q That is, you counted the rating similar? A Yes.

Q Irrespective of the spelling of the name? A Yes, sir,

945 if the initials—the names, the initials, were the same and only a difference of probably an "o" for an "a", it might have been an "o" in Dun's book and an "a" in the other book, we counted them similar in the same party.

Q Supposing there was the same name with different initials, or one initial different?

Mr. O'Connor: I object to that question as assuming a fact that is not shown to exist.

Q Did you find any such cases? A My recollection is

of
r.

that we had a few like "J. O." for "J. E.", in a small town where there was probably only a few hundred inhabitants.

Q You treated them the same? A Only in the small towns.

Q Who made the computation as to the total number of names in each of these states? A Some were made by Mr. Kramer and some by myself.

Q Which did you make? A In the state of Alabama I counted the total number of names, Mr. Kramer counted the number of names not on the R. G. Dun book and the number of similar ratings. I counted the total number of names in the Lumbermen's Credit Association book.

Q And where did you put the totals down? A Totals, on the right of the printed name.

Q At the bottom of each page? A No, sir.

Q At the end of a state? A At the end of the hundreds there is a mark made that indicates that that was a hundred.

Q What mark is that? A That is the way they were
946 done in very near all but a few states (indicating), first one or two, by a straight line and 100 above the line.

Mr. O'Connor: You counted the total number of names by hundreds? A Yes, sir.

Re-direct Examination by Mr. O'Connor.

Q You say that as to Arizona you had charge of R. G. Dun & Company's book, and Mr. Kramer had charge of the book of the Lumbermen's Credit Association? A Yes, sir.

Q Is that correct? A Yes, sir, that is correct.

Q As to that state he called off the names to you from the Lumbermen's Credit Association book? A Yes, sir.

Q And you examined the ratings given to these names in R. G. Dun & Company's book? A Yes, sir.

Q He gave you the name under a certain town, didn't he? A Yes, sir.

Q In each case when he called off a name you called off the town in connection with the name, or you indicated to each other the town where the name was located, did you? A The one that called from the Lumbermen's Credit Association book called the town; when they came to the town they called the town and the county.

Q Then he called the names in that town? A He called

the names in the town, yes, sir. A And if the name was
947 called off to you while you had charge of R. G. Dun &
Company's book you looked for that name in that town?
A Yes, sir.

Q If you found more than one person of that name what did you do? A Asked Mr. Kramer for the initials of the party.

Q If you found more than one person of the same name including the initials—did you in any case find more than one person of the same name with the same initials in the same town? A Not to my recollection.

Q Then so far as you recollect, you always found only one person of the name which he called off to you in the town? A Yes, sir.

Mr. Pease: I object to these questions as leading.

Q Mr. Gallagher, I notice on this paper which you used in making the comparison, and which you have referred to in your testimony as a schedule, the word "started Oct 24" what does that mean? A That was the date that we started the work.

Q Refers to October 24, 1902? A That is the memorandum made there by me.

Q Below I notice the following words "Dun March 1901 July 1901 L C A", what do those words mean? A That is the dates of the books which we compared.

Q And they indicate then, the March, 1901 book of R. G.
Dun & Company, and the July, 1901 book of the Lumber-
948 men's Credit Association? A Yes, sir, that is a memorandum made there by me.

Re-cross Examination by Mr. Pease.

Q In towns where there was not more than one person or firm of the same name, you paid no attention to initials? A The initials were called off with the name.

Q Now at the time you did this work, were you familiar with the key of the Lumbermen's Credit Association? A No, sir, all I had was the schedule there.

Q And you treated everything as similar in the way of a capital rating, as indicated by this schedule entirely? A Yes, sir.

Mr Pease: That is all.

ANTHONY J. KRAMER, called as a witness on behalf of complainant, being first duly sworn, testified as follows:

Direct Examination by Mr. O'Connor.

Q What is your name? A Anthony J. Kramer.

Q What is your business? A Working for R. G. Dun at the present time.

Q How long have you been working for them? A Last two months.

949 Q What are your duties? A I am typewriting now, counter work.

Q Did you have anything to do with the comparison of any books of the Lumbermen's Credit Association and R. G. Dun & Company? A Yes, sir, I did.

Q Did any one assist you in that work? A Yes, sir.

Q Who? A Mr. Gallagher.

Q What books did you compare? A Compared the March, 1901 of Dun with the July, 1901 of the Lumbermen's Credit Association.

Q For what purpose did you make the comparison?

Mr. Pease: Objected to as immaterial.

A For the purpose of finding out similar ratings in the both books,—between the two books, rather.

Q How did you make the comparison? A We had a comparison.

Q In what way? What did you do and what did Mr. Gallagher do? A Mr. Gallagher—in the first three states we alternated in calling off and checking, in the balance of the states, as far as we got, Mr. Gallagher did the calling and I—Mr. Gallagher called out of this book (indicating).

Q What book? A Book of the Lumbermen's Credit Association, and I hunted up the name in R. G. Dun's book and gave him the rating in both books.

Q Did you use any paper in connection with your
950 work? A Yes, sir, we used this key, had this key right in front of us as a guide.

Mr. Pease: You mean schedule?

A A schedule, yes, sir.

Q Look at the paper which I now show to you marked Complainant's Exhibit 34, November 4, 1902, and state if that is the paper which you used in connection with that work? A It is not the same paper, no, sir.

Q Did you use one paper and did he use the other? Did each of you have separate copies of that schedule? A No, sir, we both used the same schedule.

Q Which schedule did you use in that work? A Don't understand what you mean.

Q Which is the identical paper that was used in making the comparison? A Well, the paper that we used I haven't got with me, because it was soiled and I wanted to have a clean copy.

Q Mr. Gallagher has stated that this was the paper.

Mr. Atwood: Don't tell the witness, let him tell.

A Well, it may be as far as he knows, but I don't know if it is or not.

Q What is the other paper which you have before you, that isn't the original paper which you used? A This is a copy of the original schedule.

Q When did you make that copy? A Made that copy the other,—I think it was yesterday.

951 Q From what? A Made that from the original copy given to us by Mr. Stein.

Q Where did you find the original copy from which you made that paper, where was it.—where did you make the copy? A Why, in the office.

Q Who had charge of the original paper? A Mr. Stein did, and he furnished us with a copy of the original one that he—original schedule.

Q Look at that paper in front of you and state whether you recognize it as the original paper? A Yes, sir, I do, by these letters here (indicating).

Q What letters? A These "Ys" here, that is my writing.

Q The paper marked Complainant's Exhibit 34, November 4, 1902, is the schedule which you used in making the copy, is it? A Yes, sir, it is.

Q Now you say that he sometimes called from the book during most of the work he called from the book of the Lumbermen's Credit Association? A Yes, sir, he did.

Q And what did you do? A I hunted up the name in R. G. Dun's book and gave him the rating.

Q How did you give him the rating? A When he called off a name I hunted the name in Dun's book and I hunted the rating and compared the rating of Dun's with this schedule.

Q And what did you give him? A I gave him the equivalent of R. G. Dun's.

952 Q As shown by the schedule? A As shown by the schedule, yes, sir.

Mr. Pease: You mean the equivalent rating?

A Equivalent rating, yes, sir.

Q That is, the rating of the Lumbermen's Credit Association equivalent to the rating of R. G. Dun & Company, according to the schedule? A According to the schedule, yes, sir.

Mr. Pease: You gave him the rating of R. G. Dun?

A No, sir, I did not, I gave him the rating of the Lumbermen's Credit Association according to this schedule that is equivalent to R. G. Dun's.

Q Suppose you found the name, John Jones in the reference book of the Lumbermen's Credit Association, or rather, suppose that Mr. Gallagher called off to you the name, John Jones in a certain town? A Yes, sir.

Q What did you do? A I hunted up the name in Dun's book.

Q In that town? A In that town, and found out the rating that R. G. Dun had, and compared them.

Q Suppose you found John Jones to be rated in R. G. Dun's book as "D"? A I gave him "AB" as the Lumbermen's Credit rating.

Q As the equivalent? A As the equivalent, yes, sir, to "D".

Q You looked at your schedule and found what "D" of Dun & Company was equivalent to in the rating of the

953 Lumbermen's Credit Association? A Yes.

Mr. Pease: You don't mean rating, you mean key.

Mr. O'Connor: Well, key to the rating.

Mr. Pease: Key of the Lumbermen's Credit Association.

A Yes, sir.

Q Who kept account of the number of names? A Well, we alternated in that.

Q Have you the result of the work of which you kept account? A Yes, sir, I have.

Q Read it off. A In the first state, Alabama, Mr. Gallagher counted the total number of names in the Credit Association book, I counted the number of names that were not found in R. G. Dun's book, and the total of similars.

Q Have you compared the numbers of the counting that

you did with Mr. Gallagher's memorandum of the work that was done by both of you? A Yes, sir, I have.

Q And did you find them to be the same? A They are the very same thing.

Q Perhaps you would better read off—

Mr. Pease: There is no question about that, we are not going to count them.

Q Your figures are just the same as Mr. Gallagher's? A Yes, sir, they are the very same.

Q Will you please look over the figures as given by Mr. Gallagher and state whether they are the same as your
954 figures? A (Witness compared figures) They are exactly the same except in the state of Delaware where I gave ten similars and he gives 45 I think, but I didn't count them, he counted them.

Q Who made the count of the state of Delaware, you or he? A Mr. Gallagher.

Q I mean as to the similar ratings? A Mr. Gallagher did the counting in that state.

Q You were still engaged on this work of comparison when you were subpoenaed to come to testify in this case, were you not? A Yes, sir, I was.

Q How long have you been engaged on it? A On this work?

Q Yes. A Since the 24th of October.

Cross-Examination by Mr. Pease.

Q Were you subpoenaed to appear here? A No, sir, I was not.

Mr. O'Connor: You were asked to come?

A I was asked to come, but I wasn't subpoenaed to come.

Q In these comparisons what ratings did you include in these similars as you call them? A In the similar ratings we include the references, all blank ratings and all ratings
955 that are equivalent to R. G. Dun's key.

Q According to this schedule? A According to this schedule, yes, sir.

Q You mean by all other ratings, capital ratings? A Capital ratings.

Q You did not take into account credit or pay ratings? A No, sir, we did not.

of J.

Q They may have been all different? A The credit ratings, you mean?

Q The credit and pay ratings, yes. A Well, they may have been some different.

Mr. O'Connor: Objected to as calling for a conclusion.

Q Did you make any other comparisons except as to the capital references and blank ratings? A Made comparison between the names so as to see that they were alike, and if it was a company or a single firm or person.

Q Did you spell out the names? A If I didn't understand a name I asked Mr. Gallagher to spell it for me and he did so.

Q If the names were pronounced the same you didn't ask him to spell the names, did you? A Don't understand your question; if they were pronounced the same, what do you mean by that?

Q Supposing a name had silent letters in, you didn't ask him to spell it, did you? A If I couldn't find it in my book I asked him to be so kind as to spell it for
956 me, to enable me to find it much easier.

Q Take a name like the name of Park, did you ask him to spell that? A Don't think I would.

Q Or Marquardt? A What is that please?

Q Marquardt? A I think I would but I wouldn't know how to find it.

Q You wouldn't know how to find it? A I think I would ask him to spell it, yes, sir.

Q As a rule you didn't pay any attention to the spelling, did you? A As I say, if I didn't understand the name and if I thought that there might be a different name with the same pronunciation and spelled different, I asked him to be so kind as to spell it for me.

Q Those were in special cases? A Especially if I didn't understand it, yes, sir.

Q Well, but, as a rule you didn't understand the names, didn't you, in the great majority of cases? A Common, ordinary names, yes, sir, I did.

Q Well, most of them were common, ordinary names, weren't they? A There are some names that are pretty carchy in there.

Q Most of them, I say, majority of them? A Majority of them were, yes, sir.

Q Did you make any comparison as to the initials? A Yes, sir, we paid attention to the initials.

957 Q How about classification of business? A I always inquired the business whenever he called off a name. Depos Anth Kra

Q Each time? A Not each time, no, sir, as a general rule.

Q What do you mean, as a general rule? A If he called off a name and I couldn't find the name, I would say, what business is he in, and he would tell me the business.

Q In cases where you couldn't find the name? A When I couldn't find the name, yes, sir.

Q That didn't occur in towns where there was only one party by the same name, then. A Well, if there was one party by the same name, I generally mentioned the business when I called off the rating.

Q Do you know that Mr. Gallagher has testified that you made no comparison of the classifications of business, or the spelling of the names, or the initials in his work with you? A Well, I know I did.

Q Mr. Gallagher says you did not. A Mr. Gallagher—whenever Mr. Gallagher called off a name, he called the initials with it, if he didn't, I asked him for it.

Mr. O'Connor: Mr. Gallagher did testify that the initials were always called off.

Q As to the classification? A Of the business?

Q Yes? A I say myself, not always.

Q In what cases did you ask for it? Classification?

958 A Well, if there was more than one business firm in the same town by the same name, and secondly, if there was more than one same name and perhaps the same initials.

Q In the same town? A Yes, sir.

Q Did those cases occur frequently? A Well, I don't know how frequently.

Q Well, you wouldn't say they occurred frequently would you, only occasionally? A I don't say; don't know what to say; I never kept track of it, how many there were.

Q What did you include in the similar reference ratings? A In the similar reference rating we might have this: that if a town, a party was referred to another town as headquarters, or as their purchasing depot, that we considered similar reference rating.

Q Do R. G. Dun & Company report purchasing departments in their book? A I think R. G. Dun & Company says "see headquarters" at this and this town.

Q They do not report purchasing departments? A I

haven't paid strict attention to that, wouldn't be able to answer affirmative to that, or negative.

Q In all cases where references were made to the same town you treated them as similar without regard to the manner in which the reference was indicated, is that right? A Well, if the reference in this Lumber Association book says "see purchasing depot" right at this and this town, and
959 Dun's book says headquarters are at that and that town, I certainly consider it similar.

Mr. O'Connor: If the town is similar?

A Yes, if the town is similar, certainly.

Mr. O'Connor: That is, if the towns are the same.

A If the towns are the same.

Q Do R. G. Dun & Company refer to headquarters, do they use that term in their book? A At times they do, yes, sir.

Q You are certain about that, are you? A To the best of my knowledge I think I am.

Q Now, did you investigate or compare the ratings of those parties, such parties at the place given as their purchasing department or headquarters? A I don't think I did.

Q Then no matter if the capital ratings given such parties at headquarters was entirely different, you still counted the reference ratings as similar? A At that town we did, yes, sir.

Q How did you treat the ratings given in the Lumbermen's Credit Association book, of 100? A One hundred dollars?

Q No, the rating 100? A We paid no attention to that at all, as I said before.

Q How did you treat it? A As a similar rating.

Q Under what head, blank? A It was a blank rating, yes, sir.

Q Counted that as blank rating? A Yes, sir.

Q Did you know at that time, what that rating indi-
960 cated? A One hundred rating?

Q In the Lumbermen's Credit key? A No, sir, I did not.

Q How did you treat the rating in the Lumbermen's Credit Association book, of 89? A Paid no attention to it.

Q Well, how did you treat it? A Similar, as a blank rating, treated it as similar rating.

Q You treated it as a similar blank [illegible]ng? A Yes, sir.

Q In all instances?

Mr. O'Connor: If there was no letter?

A Of course, if there is no letter rating, no capital rating with it.

Q Then you paid no attention to any ratings indicated by figures? A No credit rating, no, sir.

Q I am not referring to pay ratings or credit ratings; were there no instances in which there was a rating given in figures in addition to the pay rating in the Lumbermen's Credit Association book? A I don't understand what you mean.

Q Take Waddell Brothers, under the town headed Freeport, Illinois, 63B; how did you treat that? A 63B, we treated that as a B rating, capital B rating, which would equal—

Mr. O'Connor: You took no note of the figures? A No notice of the figures whatsoever.

Q Or the credit rating? A No credit rating at all.

Mr. O'Connor: You took note only of the capital ratings as indicated by the letters? A By the letters, yes, sir.

961 Q Have you worked on this continuously since October 24? A For the last week we worked on it every night and every day until Saturday noon; we began Monday morning again till the books were brought up here to court, and the same way to-day. Didn't work on it to-day because we had to be up here ourselves, personally.

Q Do you know the Foster Lumber Mercantile Agency? A No, sir, I do not.

Q Ever work for them? A No, sir, I did not. This is my first experience in a mercantile agency.

Q In case of a difference in spelling of a name or in different initials, how did you treat those cases? A Mr. Gallagher treated that part of it, he had charge of this book entirely after the first three states.

Q Suppose he called off the name, J. O. Smith, and you found in Dun's book in the same town a man by the name of J. E. Smith? A I would call off J. E. Smith in my town and ask him for the business.

Q And if you found they were in the same business? A I would call off the rating according to this schedule and left the rest to Mr. Gallagher, he decided that part of it.

Q And if the rating was similar, you counted it among the similar ratings? A Mr. Gallagher did that part himself, I had nothing to do with that.

Q Didn't you do any of the checking in this book? A I

did in the first three states, we alternated then, as I
962 said before.

Q Did you meet with any such cases in those three states? A Not to my knowledge, no, sir.

Q Did you meet with any cases where there was slight difference in the style of the firm, in the name of the firm, like J. O. Smith & Company, or J. O. Smith & Son? A Those names were not considered similar.

Q They were not considered similar? A No, sir.

Q Supposing they were in the same line of business? A If there was—if this here book—if the Lumbermen's Credit book called for a company, and we had son, we did not consider it similar, because there is a great difference between son and company, might be three or four in the company and only one son.

Q Might be only a son in the company.

Mr. O'Connor: Objected to, as calling for a mere conclusion.

A We can't tell that.

Q Mr. Gallagher stated that those names were included as similar.

Mr. O'Connor: I object, because I don't remember Mr. Gallagher making such a statement.

A Mr. Gallagher may have stated that, but I state it was not, because that was our special rule, that where this book,
the Credit book, called for a company and we had son
963 we had not the company, we did not consider them similar.

Q What rule do you refer to? A The general principle.

Q What general principle? A That if this book—

Q Well, I mean whose general principle? A Whose general principle? Who do you mean by "who"?

Q You said according to our general rule. A Our rule, be Mr. Gallagher's and our rule, I suppose.

Q That is what you referred to? A Yes, sir.

Mr. O'Connor: Means the way they did it.

Mr. Pease: That is all.

Mr. O'Connor: I think that is all. I call upon Mr. Clancy to produce here tomorrow morning, at 11 o'clock, the same red book of the January, 1902 edition of the Lumbermen's Credit Association, which was produced before Master Bishop in this case. And I want to say that as we haven't been able to complete this comparison of the books, we will proceed to complete it, and as it will be impossible to complete it

within the time allowed by the Court for us to put in our testimony, we will submit the comparison to the court on the hearing of the case and ask the Court to allow us to put it in at that time.

Mr. Pease: To which we shall object at that time.

Mr. O'Connor: And we may review some of the work of comparison between the September, 1901 book of R. G. Dun &
Company and the January, 1902 book of the Lumber-
964 men's Credit Association and submit the result of our
work to the Court on the hearing of the case.

Adjourned to November 5, 1902, at 11 o'clock A. M.

By agreement a further adjournment was had to November 5, 1902, at 2 o'clock P. M.

965 November 5, 1902. 2 o'clock P. M.

Met pursuant to adjournment;
Present, as before.

THEODORE E. STEIN, a witness recalled on behalf of complainant, having been previously sworn, testified as follows:

Direct Examination by Mr. O'Connor.

Q What is your first name? A Theodore E.

Q Yesterday you testified in regard to the number of similar ratings in the September 1901 book of R. G. Dun & Company and in the January 1902 book of the Lumbermens Credit Association? A Yes sir.

Q You divided the similar ratings into three classes, first, where the ratings were given and were similar according to the schedule which you used in making the comparison; secondly, where the ratings were given or where the ratings were blank, as you call them; and, thirdly, reference ratings, or names under certain places were not rated in those places but references were made under them to some other places? A Yes sir.

Q In some states you gave us the number of reference
966 ratings, but in other states you gave us only the total
number of similar ratings without giving us the number of reference ratings included in them? A Yes sir.

Q Have you, since the adjournment yesterday afternoon, counted the number of reference ratings in the states in which

you did not give them to us yesterday? A The number that we call similar?

Q Yes. A Yes sir.

Q Please tell us the result of your examination with reference to those particular ratings? A Before doing that I'd like to give the figures as to the number of similar ratings in the State of Indiana,—I believe I omitted that in the other.

Q Very well, give us the number of ratings in the State of Indiana. A The total number of names in the book of the Lumbermen's Credit Association January 1902 book, 2283; number not in R. G. Dun & Company September 1901 book, 512; number of names appearing in both books, 1771; of these, 733 bore similar ratings.

Q Now please give us the number of reference ratings in the States where they were omitted yesterday. A These are the number of reference ratings which we found to be the same in both books or each book: Arizona, 2; Arkansas 71;

California 131; Colorado, 25; District of Columbia 4

967 Illinois 117; Indian Territory 49; Indiana 62; Iowa 443;

Kansas 195; Kentucky 21; Louisiana 31; Maryland 13; Pennsylvania 123; Oregon 12; Oklahoma Territory 73; New Mexico 6; South Caroline 7; South Dakota 112; North Dakota 133; New Jersey 20; New Hampshire 10; Ohio 44; Nebraska 235; New York 119; Missouri 160.

Q These were included in the number of similar ratings which you gave to us in these States yesterday, were they? A Yes sir.

Cross-Examination by Mr. Pease.

Q Mr. Stein, did you make any examination or count as to the number of blank ratings included in the similar ratings of these same States? A No sir;—that is, counting the blank ratings separately, no.

Q Two or more agencies reporting the same line of business would of necessity make or have the same reference rating if both were correct, would they not?

Mr O'Connor: I object to the question because it is not proper cross-examination, and because the witness is not shown to be competent to testify to the question, and because the question calls for a mere conclusion of the witness.

Question read by the reporter.

968 A If both were correct I suppose they would.

Q The same would be true as to capital ratings of

concerns in the same line of business having or reporting the same amount of capital or an amount of capital within the range indicated or included in the different letters of the keys, would it not?

Mr O'Connor: Same objections.

Question read by the reporter.

A Why, as far as I know I suppose it would, but I should not care to answer the question positively.

Q Well, if two agencies were reporting upon the same concern having the same capital or the same information as to the estimated worth, the rating would necessarily be the same, would it not, or similar?

Mr O'Connor: Same objections.

A It would depend on the way the different agencies rated I should think.

Q What difference would that make, if they both had the same information?

Mr O'Connor: Same objections.

A Well, one might rate higher, and one might rate lower I suppose if they had different ways of rating the reports.

Q Then is the rating a matter of opinion, or judgment?

Mr O'Connor: Same objections.

A To some extent I think, yes.

969 Q Supposing a concern was estimated to be worth or reported to be worth anywhere between 38,000 and 48,000 and he was reported in both agency books, that is Complainant's and the Lumbermen's Credit Association, and both were correct the rating would necessarily be similar, would it not?

Mr O'Connor: Same objections.

A If they both rated him the same the ratings would be the same,—if that is what you mean.

Q Well, the rating would have to be similar, wouldn't it, if correct?

Mr O'Connor: Same objections.

A Yes sir.

Q According to the present keys used by each agency the rating would necessarily be similar, if a man was estimated to be worth from thirty-eight to forty-eight thousand dollars?

Mr O'Connor: Same objections.

A I should suppose so.

Re-direct Examination by Mr. O'Connor.

Q Have you anything to do with the fixing of ratings? A No sir.

Q In the course of your duties you have nothing to do with the ratings, the estimation of the ratings?

970 A Nothing as to fixing them by information received.

Q It is not a part of your duty to decide upon what information the ratings shall be based, is it? A No sir, it is not.

Q Or what ratings shall be given to a party upon any information furnished regarding that party? A No sir.

Q Do you know of your own knowledge by what rules ratings are determined in the office of R. G. Dun & Company? A No sir, not fully.

Re-cross-Examination by Mr. Pease.

Q Don't you put a rating on the special reports which you send out in answer to inquiries? A Yes, each report has a rating below the report.

Q You compile that rating yourself? A No sir.

Q Who does? A Whoever writes up the report originally.

Q That is to say, the rating is placed on the original report? A Yes sir.

Q And don't you do any of that work? A No sir.

Q Making up the original reports? A No sir.

Q Who does it over there?

Mr O'Connor: Objected to as immaterial and not proper cross-examination.

971 A I cannot say, I am not familiar in that department.

Q Don't you know anyone who makes up or assists in making up these original reports?

Mr O'Connor: Same objections.

A Not by name, I don't believe I do.

Q Well, are you certain that you do not?

Mr O'Connor: Objected to, because the witness has answered several times.

A You mean the person who writes up the reports from the information received,—is that what you mean?

Q Fixes the ratings on the original reports, determines the ratings on the detailed reports?

Mr O'Connor: Same objection.

A I believe that a Mr Sandy has charge of that department, I am not positive. Deposit Theod Stein.

Q Now, in sending out the special reports on these inquiries, do you simply copy the original detailed report?

Mr O'Connor: Same objection.

A Copy the contents.

Q And do you not take into consideration and supplemental information received or acquired information?

Mr O'Connor: Same objections, and also that it is not proper cross-examination.

Q On the party reported on. A I don't know what you mean by that; I answer it up to the date of the last re-
972 port on this letter.

Q And you take no account of the information received subsequent to the date of that detailed report? A No sir;—I say I take no account,—I pass the ticket through to that department, and they answer it, or marked for later information; they get it.

ANTHONY J. KRAMER a witness recalled on behalf of complainant, having been previously sworn, testified as follows: Deposit Anth Kram

Direct Examination by Mr O'Connor.

Q You testified yesterday, Mr Kramer, didn't you? A Yes sir, I did.

Q You testified in regard to the number of similar ratings in the July 1901 book of the Lumbermen's Credit Association and the March 1901 of R. G. Dun & Company, did you not? A Yes sir, I did.

Q You gave us the total number of similar ratings in certain States which you had found by a comparison of the books? A Yes sir, I did.

Q You stated that among those ratings were what you called reference ratings? A Yes sir.

Q Since your examination yesterday have you counted
973 the number of reference ratings which were included in your count of similar ratings that you gave us yesterday? A Yes sir, I did.

Q Will you please give us the result of your examination? A In Alabama there are 21; in Arizona 4; in Arkansas 56; in California 131; in Colorado 26; in Connecticut 8; in Dela-

of J. ware 1; in the District of Columbia 1; in Florida 23; in Georgia 24; in Idaho 4; In Indiana 45; in Indian Territory 50; In Iowa 401; in Kansas 196; in Kentucky 22; in Louisiana 28; in Maine 23; in Maryland 5; now, in Massachusetts, I finished that State last night, I counted up the total number of names which amounted to 1527.

Q You have since counted the State of Massachusetts, have you? A Yes sir.

Q Well, give us the result of that count. A 1527 names.

Q Where? A In Massachusetts.

Q Where,—in what book? A Lumbermen's Credit Association book.

Q July 1901 edition? A Yes sir; 472 names not on R. G. Dun's book; 378 similars, and among those 378 there are 31 reference similars.

No cross-examination.

of W. 974 BURTON W. STADDEN, a witness called on behalf of complainant, being duly sworn at the time and place last above mentioned, upon his oath says:

Direct Examination by Mr O'Connor.

Q Mr Stadden you are the secretary I believe of the Lumbermen's Credit Association, are you not? A I am.

Mr O'Connor: Mr Stadden was subpoenaed to produce the red-bound book of January 1902 edition of the Lumbermen's Credit Association which was produced before Master Bishop. Mr Stadden has not brought it, but Mr Pease says that he intends to offer it in evidence on behalf of the Lumbermen's Credit Association in the case. Upon that statement we waive the production under the subpoena.

We offer in evidence these four certificates of the Librarian of Congress as to the deposit of the four 1901 editions of R. G. Dun & Company's reference book, as Exhibits 1, 2, 3 and 4 of this date.

(The papers so offered in evidence are marked "Complainant's Exhibits 1, 2, 3 and 4, Nov. 5, 1902".)

Mr Pease: We object to the offer of the certificates marked Exhibits 1, 2, 3 and 4 of this date, for the reason that they are incompetent, immaterial, irrelevant, and not connected

with any issue in this case, and for the further reason
975 that the validity of but one copyright can be determined in this proceeding.

Q You were subpoenaed, Mr Stadden, to bring not only the red-bound book of January 1902 edition, the reference book of the Lumbermen's Credit Association, but also the red-bound book of the July 1901 edition of the Lumbermen's Credit Association; did you bring the second book? A I did not.

Q Did you make any search for it? A I did not.

Q Why didn't you bring it? A By advice of counsel.

Q Counsel of the Lumbermen's Credit Association? A Yes sir.

Q That is, Atwood & Pease? A Yes sir;—I'll say this though, that I am quite confident that the books are not in our possession.

Q Well, are they in existence? A I do not think there are any in existence,—I haven't seen them.

Mr. Atwood: You mean the July 1901?

A Yes.

Q Where was that book when you last saw it? A I don't know.

Q When was it that you last saw it? A I should say probably about the time that book was published, about that time.

Q About July, 1901? A I should say about that time.

976 Q When you last saw it where? A It must have been in our office, I don't recall of course, the time I did see that.

Cross-Examination by Mr Pease.

Q Mr. Stadden, what if any use is made of these so called red bound books after the publication of the reference book to which you refer?

Mr. O'Connor: Objected to as immaterial and not proper cross examination.

A None whatever.

Q Are they preserved or kept?

Mr. O'Connor: Same objection.

A They are not.

Q Do you recall having seen the red bound books used in connection with the July, 1901 edition of the reference book

of the Lumbermen's Credit Association since about that date? A No, I can't say that I do.

Mr. O'Connor: I will offer in evidence, and will read on the hearing of this case, all the depositions that have been taken in the case in behalf of the complainants, and the evidence that was taken in the case before Master in Chancery Bishop.

977 IN THE CIRCUIT COURT OF THE UNITED STATES

For the Northern District of Illinois

Northern Division.

Mary B. Dun, Robert Dun Douglas, Francis L. Minton and Walter D. Buschanan, Executors and Trustees under the will of Robert G. Dun, deceased,	Gen. No. 26,143.
vs.	
Lumbermen's Credit Association, William Clancy and Burton W. Stadden.	

Depositions taken on behalf of defendants in the above entitled cause, before Marshall E. Sampsell, Clerk of the United States Circuit Court for the Northern District of Illinois, duly appointed as Special Examiner, at his office in the Monadnock Block, Chicago, Illinois, on the 1st day of December, 1902, at 10:45 o'clock A. M.

Present:

Mr. John O'Connor and Mr. Thomas M. Hoyne, of the firm of Hoyne, O'Connor & Hoyne, solicitors for complainants;

Messrs. Atwood & Pease, solicitors for defendants.

978 ELMER WHEATON, called as a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Pease.

Q State your name? A Elmer Wheaton.

Q Where do you reside? A 294 Claremont avenue.

Q What is your business, Mr. Wheaton? A I am reporter and solicitor for the Lumbermen's Credit Association.

Q Were you employed by them in 1901? A I was, yes.

Q What were your duties,—what were you doing? A Why, I was reporter, getting special reports about the city, soliciting subscriptions about the city.

Q Did you work upon the revision of the January, 1902 edition of the reference book published by the Lumbermen's Credit Association? A I did.

Q How is that, or how was that revision made, what did you do? A Well, I first got a large number of inquiries or reference blanks which were placed together, referring to separate states—

Q What I mean is, what was your position in connection with that work? Were you what is known as a rater? A Rater, yes, sir, rater.

Q Now in making or fixing the ratings for that revision, what different blanks or sources of information did you 979 use? A Well, there was many. There was revision blanks, there was reports from general correspondents, there was delinquent reports from the collection department, reports from our traveling men, reports from subscribers, reports from banks, statements direct from parties that we were rating, that is, financial statements; a great many other sources of information.

Q Can you recall any others? How about clipping bureau reports? A Yes, there was clipping bureau reports and there was reports from trade journals.

Q How about law bulletin reports? A Well, law bulletin reports.

Mr. Hoyne: I object to counsel's prompting the witness.

Q Well, do you recall any others? A I know there was several others.

Q How about the subscribers lists of customers?

Mr. Hoyne: Objected to as leading.

A Well, there were subscribers' lists of customers, as well as what we call yard lists, that is, where a concern has a line of country yards and we wrote and got the information they sent in a list of their yards.

Q How about inquiries from subscribers?

Mr. Hoyne: That is objected to, he has got that in already.

A We had reports from subscribers.

Q Trade reference reports? A Yes, sir.

of
Wheaton.

Q And how about special agency reports?

980 Mr. Hoyne: Objected to.

A Well, that is correspondence, I put that in, the same with the trade reference reports, we had those of course, and agency reports from different points, special agency reports.

Q You mean special agency reports? A I said special agency reports.

Q What do you mean? A Those are agencies located in various places that do work for us to a certain extent, get reports for us.

Q And where are they located principally? A Generally in large cities.

Q How about lists from railroad companies? A Yes, railroad lists, I had those.

Q Showing what? A Showing locations of different plants, manufacturing plants and lumber yards, giving names &c.

Q What if any information did you have from the retail lumber dealers' Association?

Mr. Hoyne: Objected to.

A We had information from them, as well.

Q Of what character? A Well, gave us information in relation to their being regular dealers and names which it was claimed possibly omitted that ought to go in the book.

Q Just explain the method in which you did the rating, the method used in fixing these ratings in the revision work on this edition of the book? A Well, in the first place

981 we had revision blanks, those were taken, and we had the previous red book of the Lumbermen's Credit Association cut up with the printed matter of the pages pasted upon ruled blank sheets; these were compiled together in the form of a book, alphabetically arranged with reference to towns.

Q What do you mean by the red book? A The publication of the Lumbermen's Credit Association.

Q You mean their reference book? A Reference book of the Lumbermen's Credit Association.

Q Why do you call it red? A Well, that was the name which it is generally known by all over the country.

Q What color is it bound in? A It is a red book.

Q Bound in red, isn't it? A Bound in red, yes.

Q It has always been bound in that way, hasn't it, that color? A Always been bound in red as long as I have known it.

Q Please go on, tell us how you did this rating? A We also had a similar book of ratings of other authorities and some names placed in it.

Q What use did you make of this first book that was bound in separate states? A We used that to make corrections, enter in new names; that was printer's copy.

Q And what did you put in that book? A We put in that book the changes in rating and any new concerns that went into business, as well as any new towns where there was

982 any new concern started.

Q What did you have before you while doing this work for the revision? A Well, during the period of the revision we had all these sources of information before us at different times, and the ruled blank book which I referred to.

Q That is, printer's copy? A Printer's copy, and the corresponding one with other authorities, names of other authorities written in.

Q How was that last mentioned book designated? A Well, around the office it was called the red bound book.

Q Now just explain the method or manner in which you did this work? A Well, to commence with, I took up the first revision blank that appeared on the—before me, and compared it with the town which was on the printer's copy to see if any changes should be made, commencing with the first name of course, on the blank.

Q On what blank? A On the blank, revision blank, and if any changes were suggested on this revision blank why they were made, I made them, in the printer's copy. And if anything seemed to be lacking why I wrote to the correspondent, I wrote to some source of information generally at the town from which the revision blank came.

Q What use did you make of these other sources of information which you have mentioned? A Well, I referred to them very little, as a matter of fact.

983 Q Wait a minute. Read that question. I mean the reports, the different reports from the correspondents and traveling men and subscribers' personal statements, which you have enumerated? A Well, I used them in the same manner which I used the revision blanks after I got through with the revision blanks, took up the information from the various sources which I have referred to heretofore. Sometimes I was compelled to refer to the statements which were in the office on file but not before me with the revision blanks.

of Wheaton.

Q Well, in what nistances or cases would you refer to the files containing these different sources of information? A Well, where there was any question in my mind regarding the rating.

Q You mean regarding the change of the rating?

Mr. O'Connor: I object to the question as leading and suggestive.

A Change in rating or regarding classification, that is the line of business which the man was engaged in

Q Now what if any use did you make of the red bound book during this revision work? A Well, simply as suggestion. That is, if a name appeared in the red bound book which I didn't have, why I wrote to the parties, down to the town, our correspondent or to the parties direct, and made inquiry regarding the concern financially and regarding the line of business they were engaged in.

984 Q You mean, didn't have where? A Why, which I didn't have either on the revision blank or which didn't appear written in the printer's copy.

Q Now what if any other use did you make of the red bound book? A Well, no other, excepting as to classifications, the same thing too, would occur there, then I would write and if there was any difference in the classifications, find out whether the man was in our line of business or not.

Q Are these the only uses which you made of the red bound book during this revision work A That is the only use I made of it.

Q Did you ever copy or transfer any name or rating from the red bound book during this revision work?

Mr. O'Connor: Objected to as leading.

Q Into the printer's copy? A Not unless we got information which would tend to show that it ought to go in, that is, got a report from the correspondent.

Q Well, I asked you if you ever transferred or copied any name or rating from the red bound book into the printer's copy?

Mr. O'Connor: Objected to as leading.

A Well, no, not in the sense you refer to. No, not without I had got authority from something outside of their information.

985 Q Well, what do you mean by that? A Well, report from the correspondent or information from the man direct.

Q Then upon what did you, or from what did you take that name or rating in those cases? A Well, generally it came from the information, this file, from the information which came into the office from our letters and correspondents,—might say from our files.

Q Did you ever transfer any name or rating from the red bound book into the printer's copy for which or in relation to which you had no other information in the office?

Mr. O'Connor: Objected to as leading.

A No, sir, I did not.

Q Did you also work upon the revision of the July, 1901 edition of the reference book published by the Lumbermen's Credit Association? A I did.

Q In what manner did you do that, as a rater? A As a rater, yes.

Q And how was that work done with reference to the work which you did— A Just the same as the work in the previous publication.

Q You mean the one you have testified to previously? A Just repeat your question again, as to the date there, 1901?

Q The July, 1901. A The same as the one following, yes, the information was just the same, we pursued the same course that I did in the one following, one we were just 986 talking about.

Q Did you work also as a rater upon the January, 1901 edition? A I did.

Q And how did you do that work? A The same as—

Q —as the others? A As the others.

Q How often did you, during this revision work, refer to the red bound book? A Why, very seldom, I don't believe over a dozen times.

Q You mean in each revision? A Yes.

Q About what percentage of names was there a change in the rating between the revisions in the work which you did? A O, I think four or five per cent, probably.

Q Did you personally ever refer to the red bound book except in the case of new names, during this revision work which you did?

Mr. O'Connor: I object to the question as leading.

A No, I did not. I mentioned classifications.

Q Never for ratings?

Mr O'Connor: Objected to as leading.

A No, never for ratings.

f
eaton.

Q Did you have revision blanks for all of the towns, for each town which you were revising for each of these editions when you began the work?

Mr. O'Connor: Objected to as leading.

987 Q Well, during the time. A In most every case.

Q Now in such cases, what did you do? A Why, we wrote again for information, wrote to various sources to get the information.

Q Did you personally look after that? A To a certain extent I did.

Q I mean in the territory which you were doing? A Yes.

Q Which you were revising? A Yes.

Q From whom were these different revision reports received? A Why, from correspondents.

Q Where? A Various towns where the concerns referred to were located, also from towns in the district where they were located.

Q How many times did you send for revision blanks to towns where they weren't furnished promptly, after you began the work, I mean? A Several times.

Q Kept at it until you got one?

Mr. O'Connor: Object to the question as leading.

A Kept at it till the book went to press.

Cross-Examination by Mr. O'Connor.

Q You are now in the employ of the Lumbermen's Credit Association? A Yes, sir.

Q How long have you been in its employ? A Well, that and the concern, that is, the previous name it held, about eleven years.

988 Q What was the previous concern? A Lumber Mercantile Agency.

Q Mr. Clancy was connected with the concern all the time you were in its employ? A Yes, sir.

Q What is your present position? A Solicitor and reporter in the city here.

Q How long have you held that position? A Ever since I became connected with the agency.

Q What are your duties? A Getting personal reports here in the city on special inquiries, calling around from house to house in the matter, picking up information where I can get it in a general way and soliciting subscriptions, then at times I act as rater in the office.

Q But most of the time you are engaged in work about the city? A Yes, sir.

Q How much of the time are you engaged as a rater? A Well, during the period of about three months before the book comes out I put in about half the time, besides working some nights; half the time in the office in the day time.

Q Where do you do the night work? A At home; have done some in the office some years ago.

Q When you do the work at home what material do you take home with you? A Well, depends upon what I am working on.

989 Q I understood you to say you do some of the rating at home? A Yes.

Q Was I correct? A Yes, sir.

Q When you do the rating at home what material do you take home with you? A Well, if I happen to be working on a bunch of revision blanks, I take those home with me; take home printer's copy.

Q Do you take home the red bound book with you? A I have done it.

Q Don't you generally do it? A Not at all times, no, sir.

Q What is this red bound book? A Well, it is a book constructed the same as the printer's copy.

Q A separate red bound book is used for each edition, is it not? A Yes, sir.

Q Were you connected with the rating done on the January, 1902 edition of the Lumbermen's Credit Association? A I was.

Q What red bound book was used in the making up of that edition? A The same as in the previous editions.

Q Well, describe the particular red bound book that was connected with the January, 1902 edition? A It was composed of the pages of the previous publication of the reference book of the Lumbermen's Credit Association.

Q That is, of the July, 1901 edition of the Lumbermen's Credit Association? A July, 1901, and it was pasted
990 upon blank sheets ruled then compiled in the form of a book and the towns alphabetically arranged. On the blank spaces there was names inserted with figures and characters after them.

Q Where were those names taken from? A I have been told they were taken from other authorities.

Q What other authorities? A Bradstreet's and Dun's agencies.

f
eaton.

Q What were the figures? A They referred to the ratings, I understood.

Q What ratings? A Ratings which I understood appeared in the Bradstreet's and Dun's books.

Q Did you understand those ratings? A Why, I wasn't very familiar with them, no.

Q Were you able to interpret them? A Yes.

Q How? A O, I think I had a little sheet one time with some ratings on it that corresponded.

Q What were those sheets on which the ratings were furnished to you? A I presume they would answer as keys.

Q What is it? A I presume they would answer as keys.

Q What keys? A Correspond with the ratings there.

Q Were they R. G. Dun & Company's keys? A I don't know that, I am not familiar with R. G. Dun & Company's keys at all.

Q Was Bradstreet's key among them? A I don't know that, I am not familiar with Bradstreet's key.

Q Where are the keys that were furnished to you? A I don't know.

Q What did you do with them after you had used
991 them? A I used them so seldom that I don't know what became of them.

Q But you did use them to a certain extent in your work, did you? A More as a matter of curiosity, than anything else.

Q What was your curiosity? What were you curious about? A Well, I would sometimes find that we had a man rated very poorly and I knew that it was correct, and some little point would lead me to see how the other authorities rated him.

Q Did you refer to the other authorities? A In that way only.

Q Did you find any difference between your rating and the rating of the other authorities? A I did in some cases, very frequently.

Q What did you do in such cases where you found a difference? A I was governed by the information we had on our blanks, and I wrote and got further information.

Q Can you remember any cases where you found a difference? A No, sir.

Q If you knew that the rating which you had was correct why did you write for more information? A Well, there is always a possibility of an error.

Q Did you never change your rating in any case? A O, yes. Depos Elm

Mr. Atwood: You mean without other information?

992 Q No, did you ever change your rating in any of the cases where you discovered a difference between your rating and the other ratings? A I don't remember that I ever did. Don't think I did, think it was always corroborated when I wrote after the information, our rating.

Q You spoke of ratings being in this red bound book, and new names; what were the ratings in the red bound book, where were they? A Their location after the names, you mean?

Q Yes. A Yes, located after the names.

Q How many ratings were after—were there ratings after each name? A I think so.

Q How many ratings were after each name besides the rating of the Lumbermen's Credit Association? A Why, I think there was two or three, I can't tell exactly.

Q Were those two ratings in separate columns? A I don't remember now.

Q How long have you used similar red bound books in connection with the making up of editions of the Lumbermen's Credit Association?

Mr. Pease: Object to that question as not proper cross examination, not limited to the editions of the reference book in question in this case.

Q Answer the question.

Mr. Pease: I instruct the witness, or advise the wit-

993 ness not to answer the question unless it be limited to the publications—

Mr. O'Connor: I ask the question for the purpose of testing the memory of the witness.

Mr. Pease: —in question in this case.

Q Do you refuse to answer the question? A Why, yes, under the circumstances.

Q What states did you revise in the January, 1902 edition of the Lumbermen's Credit Association book? A I don't remember.

Q Do you remember any of them? A No, sir.

Q What states did you revise in the July, 1901 edition of the Lumbermen's Credit Association? A I can't remember that.

Q Do you remember any of them? A No, sir, I do not.

Eaton.

Q What states did you revise in the January, 1901 edition of the Lumbermen's Credit Association? A I can't remember that.

Q Do you remember any of them? A No, sir.

Q Do you remember any state that you ever revised? A Yes, I think I remember some states that I revised.

Q When? A I don't know the dates?

Q Prior to January, 1901?

Mr. Pease: We object to that question as not referring to any edition of the reference book in question in this case, and advise the witness that he needn't answer that or any
994 other question relating to any reference book prior to January 1901 edition.

Q You refuse to answer? A Yes, sir.

Mr. Hoyne: What right has counsel for the defendant to advise the witness not to answer?

Mr. Pease: That is for the Court to say.

Mr. Hoyne: You are not attorney for the witness.

Mr. Pease: Attorney for the defendant, though.

Mr. Hoyne: I think the witness could be compelled to answer, it is for the Court to say.

Q When you took the material home to do rating at home, did you take the whole of the red bound book with you? A That which referred to one state.

Q The portion referring to the state that you were examining? A Exactly.

Q That you were rating? A Yes, sir.

Q Were you rating only one state? A One at a time.

Q Then this red bound book was made up in sections, was it? A Yes, sir.

Q Were the sections or parts covered,—bound? A Yes, they were covered.

Q With what kind of a cover? A Kind of a paper.

Q Manila paper? A I think so, something of that kind.

Q When you carried the parts of the red bound book home and did rating at home, did you refer to the red bound
995 book in your work? A I might have, once in a long time, as a rule I didn't.

Q What was the purpose of carrying the red bound book home? A Well, it was to refer to it in the way of,—particularly of classifications, I heretofore stated, and providing there was any reason would come up for it, that is any difference of opinion in my mind.

Q How could a difference of opinion arise in your mind? A Well, for instance, I might have a blank come in from a correspondent with the name of a party on it, might leave out the classification entirely, and I would refer to Dun's or Bradstreet's.

Q What do you mean by classification? A Well, the line of business which a man was in.

Q Yes? A And I might refer then to Bradstreet's and Dun's classifications to see what they carried the name at. Chances are they might carry him as a furniture dealer or something of that kind, and I might have got the impression by taking the blank alone that it was a furniture manufacturer, now there was a difference; I would make a notation and write a letter next day down at the office in reference to the matter.

Q You did this work up to the time the book of the Lumbermen's Credit Association was issued, did you? A Up to the time it went to the printer. Up to the time the book went to the printer.

996 Q When did the manuscript of the January, 1902 edition go to the printer? A Best of my recollection, finally went about the middle of December.

Q When did you begin to do rating on that edition? A Best of my recollection some time in September.

Q What part of September? A Well, probably the middle of September.

Q When you were doing the rating, you took the names in order, did you? A Yes, sir, the names in order on the blanks, revision blanks.

Q You say that you took home a state at a time? A Yes, sir.

Q What list of names did you take home with you? A A list of the lumber dealers, manufacturers.

Q Was it a printed list? A Printed list; and kindred lines.

Q What was the form of it, was it a copy of the last edition of the Lumbermen's Credit Association? A It was.

Q What? A It was, yes.

Q Separate from the red bound book? A Yes, sir.

Q Then how did you do your work? Did you begin with the first name on that list? A First name on a blank.

Q On the list that you just mentioned? A On the revision blank, compared it with the first name on the list, the printed list, yes.

ton.

Q Let us suppose that the first name which appeared
997 on the list was John Jones, in some town in Alabama, what did you do with reference to that particular name to determine the rating to be given to it? A I took into consideration the information on the blank following the name of Jones and—

Q Did you carry home with you all the information in the office of the Lumbermen's Credit Association referring to all the names on the list which you carried home? A No, sir.

Q Now tell us what you did with reference to the name of John Jones in the case that I have mentioned?

Mr. Pease: Appearing on what?

Mr. O'Connor: The first name appearing on the list.

Mr. Pease: You mean the printer's copy?

Mr. O'Connor: Yes, what you call the printer's copy.

Mr. Pease: Printer's copy.

A I compared it with the revision blank, and if the revision blank suggested any change why I made it, if it didn't, I left it alone.

Q Did you refer to the red bound book? A No, sir.

Q Didn't look at the red bound book at all? A O, once in a while,—once in a long while on such cases as I have heretofore stated.

Q Did you have complete information in every case, in regard to every name? A No, sir, not at all times.

Mr. Atwood: You mean on the revision blank?

Q I mean on the printer's copy? A At what time, what period, when?

998 Q When you were fixing the rating?

Mr. Pease: You are getting at one thing and he is talking about another.

Mr. O'Connor: Mr. Wheaton is intelligent enough to understand my questions.

Q In cases where your information was incomplete, what did you do?

Mr. Pease: Where?

Q The information which you carried home.

Mr. Pease: You mean during the work which he did at home?

Mr. O'Connor: Yes.

A I made notations on scribbling paper and calling my attention to that particular blank.

Q Did you refer in such cases to the red bound book? A No, sir.

Q Made no reference whatever to the red bound book when your information was complete or where it was incomplete? A No, sir, only such cases as I have heretofore stated.

Q When you made a notation what did you do? A Went down to the office in the morning and looked up the files in the office to see what information we had there; if I wasn't satisfied I wrote for further information.

Q I understood you to say a little while ago that you kept writing until the book went to press? A Yes, sir.

999 Q Did you receive satisfactory information in every case before the book went to press? A No, sir.

Q What did you do in such cases where you didn't have satisfactory information before the book went to press? A Where it was a matter of rating we put the figure,—I put the figure 100 after it, which indicated there wasn't sufficient information to base a rating upon; at times I left the information blank.

Mr. Pease: Left the rating blank?

A Left the rating blank.

Q Did you refer in any of those cases to the red bound book to see what ratings were given to the names? A No, sir.

Q In those cases? A No, sir.

Q In what cases did you refer to the red bound book? A I have stated that.

Q I don't quite clearly understand from your testimony in what particular cases you referred to the Red bound book. A Well, it was in feeling whether it was worth while to write after a name or let it go as not being in existence.

Q How did you know in what particular cases you ought to refer to the red bound book? A Well, it was only a question where there was some impossibility of reading the name on the blank, something of that kind, then in cases where—

1000 Q Let us see,—

Mr. Pease: Let him answer.

Mr. O'Connor: I want to know what he means by "impossibility of reading the name". A Well, it is pretty hard to read some people's writing, and then the question if it appeared in the other books why I would write them down and find out about the name; the question is to get it right, near right as possible; the same way with the classification, line of business which a man is engaged in.

Q Where it is indefinite or vague in the information furnished you? A Yes, sir.

of heaton.

Q Are those the only cases in which you referred to the red bound book? A That is the only cases, yes, sir.

Q Then as I understand you— A Matters of curiosity, as I told you, here before, to see, where I felt that we were right, and see whether they had theirs as near right as we had it, that is all.

Q How did it happen that your curiosity was excited in particular cases? A On account of the fact that the information was very bad, say, upon a man and I wondered if the other people were getting as correct information as we were. I used this information in soliciting, I wanted to show how much better book we have got than some other people, and I wanted to get all this information together that I can.

1001 Q Then you referred to the other books, R. G. Dun & Company's, or rather, the other ratings, R. G. Dun & Company's and Bradstreet's, only in cases where the information furnished to you indicated a very bad financial condition of a party? A And in the cases heretofore mentioned.

Q What cases were heretofore mentioned? A What I told you about the classification and the difference in names.

Q Outside of the cases where the information furnished you left you in doubt as to the name or the classification, you referred to the red bound book only in cases where the information furnished you indicated a very bad financial condition of the person rated, did you? A Yes, sir.

Q Who did the correspondence in regard to information?

Mr. Pease: When?

Q During 1901? A Almost the entire office force.

Q Did you do part of it? A Yes, sir.

Q What part of it did you do? A I have described heretofore how I wrote for information, and in addition to that I made inquiries around the local trade from door to door.

Q Did any other person write for information in regard to any of the names in the states that you revised? A O, yes; yes.

Q What other persons? A Well, various persons, I 1002 don't know just who they are now.

Q What other raters worked on the January, 1902, edition? A I don't know, don't remember.

Q Don't remember any of them? A No.

Q Are any of them now in the employ of the Lumbermen's Credit Association? A It is possible.

Q Do you know Fuller? A I know Mr. Fuller, yes.

Q Did he do any rating on that edition? A I think he did, I am not positive.

Q Do you know a man named Fred Wright? A Yes, I know Wright.

Q Why do you hesitate to answer the question?

Mr. Pease: I object, he didn't hesitate.

Q How long have you known him? A I think about three years.

Q What is he doing now?

Mr. Atwood: That is not cross examination.

Mr. Pease: Objected to as not cross examination.

Q Answer the question.

Mr. Pease: Go ahead, answer the question.

A I think he is traveling for the Lumbermen's Credit Association, I aint positive of it.

Q Did he do any rating on the January, 1902, edition? A I don't know whether he did or not.

Q Did any of the other raters do any rating at home 1003 in the evening? A I couldn't say that positively, I think they did.

Q What material did they take home with them? A I don't know.

Q What other raters took work home with them that you remember? A I don't know, I can't remember any of them, can't remember the names.

Q You don't know how they used the red bound book? A No, sir.

Q Have you ever counted up the number of names in the edition in which changes were made in the ratings? A I never counted up, no.

Q Have you ever counted the total number of names in the defendant's book,—in the Lumbermen's Credit Association book? A No, sir.

Q Have you ever counted the total number of names in the states that you revised? A No, sir.

Q The red bound books which were used in making up the January, 1901, and July, 1901, edition of the Lumbermen's Credit Association book contained Bradstreet's ratings and R. G. Dun & Company's ratings, like the red bound book of the January, 1902 edition, did they? I don't mean the same ratings, but they contained ratings of R. G. Dun & Company and Bradstreet & Company written on? A Wasn't that question objected to before?

Mr. Atwood: Read the question.

1004 A As I recollect it, yes.

Q Did you ever make an affidavit that was intended to be used in this case?

Mr. Pease: We object to that as not cross examination.

Mr. Atwood: Not unless the paper is produced to the witness.

Q Answer the question. A Why, I refuse to answer the question.

Q Do you know Atwood & Pease? A Yes, sir.

Q These good looking gentlemen? A Yes, sir.

Q Have they ever talked with you about this case? A Asked me what I knew about it.

Q Did you tell them? A I think I did.

Q When did you have a talk with them last? A Why, I think Saturday probably, I think it was Saturday.

Q Mr. Clancy have any talk with you about the case? A Very little.

Q Did he ask you what you knew about it? A I think he did.

Q Did you tell him? A Naturally; yes, sir.

Q Then you have gone over this whole case with Mr. Clancy or Mr. Atwood or Mr. Pease before you came here, have you? A Not over the whole case, no, sir; just asked me what I knew about it.

Q What? A I was just simply asked what I knew

1005 about it, didn't go over the whole case.

Q Then you didn't tell them all you knew about it, did you? A Well, all I could recollect at the time.

Q Have you recollected more since you talked with them? A Well, no, but as the case progresses why there is more to it, of course, I—

Mr. O'Connor: That is all.

Re-direct Examination by Mr. Pease.

Q Why did you do some of this revision work at home, Mr. Wheaton? A Why, there was so much of it I didn't have time, I couldn't put my full time in the office, and I was practically compelled, in order to finish it, to do it at home nights.

Q Corrections were made in this revision work by you until the form was printed, wasn't it? A Yes, sir.

Mr. O'Connor: Object to the question as leading.

A What they call a form proof.

Q That is, final proof? A Final proof.

Q Weren't corrections made in the January, 1902, edition until a much later date than December 15?

Mr. O'Connor: Object to the question as leading.

A I said about then, I didn't say the exact date; might have been ten days later, depends upon the time the book was published; if it was published on the 10th of January why we made corrections probably way up till the first of January.

1006 Q Then corrections were made until within a week or ten days before the book was published?

Mr. O'Connor: Objected to as leading.

A That is about correct.

Q Were not new names taken from other sources than the red bound book? A O, yes.

Q Did you ever do any special work in the matter of getting reports and revising the book in other cities than Chicago?

Mr. O'Connor: Objected to as leading.

A Yes, sir.

Q What cities? A I have been to the city of St. Louis, made a thorough revision of that city by canvassing the trade carefully and showing them all the names which we regarded in our line of work in their city; and I also went to the city of Boston, made a thorough canvass of that city and showed the trade there the names of all the people that we regarded in our line. Both places I also made individual calls upon the dealers and manufacturers in question, got personal statements. I called at banks, in fact, did everything possible to carefuly revise the book in those towns.

Q How much time did you spend in each place? A I think from ten to twelve days, and then I worked nights as well as days, compiling information at night.

Q From what other sources are new names taken,—were they taken for these different revisions? A Well, these

1007 railroad lists. Did you refer to what I did in these other towns, or—

Q I refer to the new names used in these different revisions which you have testified to. A They were taken from railroad lists. Railroads publish a list of names along their line and adjacent lines I presume, but principally on their lines,

of Wheaton.

and names are taken from that; names are taken from trade journals, and Bureau of Press Clippings.

Mr. O'Connor: I object to this as immaterial.

Q Do you recall any other? A Why, dealers furnished us lists of names.

Mr. O'Connor: Same objection.

A Names were taken also from other mercantile authorities and looked up.

Q How about an office tickler? A Well, we have an office tickler in which the names are entered from the press clippings and other sources of information, and that book was used in the ratings.

Q In doing this revision work did you make any changes in the ratings, in any ratings where you did not have revision reports or other information before you at the time?

Mr. O'Connor: Objected to as leading.

A No, sir. We got information afterwards. At the time the change was made, put it that way.

1008 Mr. O'Connor: Objected to, because the witness has already answered the question on direct and cross examination.

Q How many employes did the Lumbermen's Credit Association have in the fall and winter of 1901? A About the same as they have now, about thirty, thirty-four or five.

Q In doing this revision work what paper did you first take up, or first examine, the revision reports or the printer's copy?

Mr. O'Connor: Objected to because it is going over ground already covered in direct examination and cross examination.

A Revision blank.

Re-cross-Examination by Mr. O'Connor.

Q Where was the record of the new names kept? A In the office tickler, I think, called the office book.

Q A book kept for that purpose? A Yes, sir, making notations in.

Q You referred to new names in the red bound book as well as ratings of R. G. Dun & Company and Bradstreet; where were those names obtained from? A I don't know where the names came from. Don't know as I understand your question.

Q Did I understand you to say that in the red bound book there were ratings of R. G. Dun & Company and Bradstreet?

A I understood there were.

1009 Q And certain new names? A Yes, sir.

Q Where were those new names taken from? A I don't know.

Q They were not names taken from your tickler, were there? A No, sir, I don't think so.

Q You say there are thirty-four or thirty-five employes of the Lumbermen's Credit Association; part of them are typewriters, aren't they? A Yes, sir.

Q How many? A O, might be ten or twelve.

Q What is their work? A They have to write the letters; shorthand writers.

Q They merely do copying work? A They are stenographers.

Q Stenography and copying work, typewriting? A Yes.

Q Who are the other employes,—that is, what is the character of their work? A They are people that look after the compiling.

Q What? A Men who look after the compiling and securing of information.

Q How many of those men are there? A O, I think there is six or seven.

Q What is the character of their work generally? A They write for statements and for corroborating information in the statements, and write to the trade to get the habit of pay and general reputation of parties in question, new names, &c.

Q What is the character of the work of the other
1010 employes of the Lumbermen's Credit Association? A O, we have book keepers and people who handle this information and keep it in order and keep track of the information which comes in, see that it does come in.

Q How many of those? A I couldn't say, there is several of them.

Q They are mostly boys, aren't they? A No, sir, they are young ladies.

Q Who are the rest of the employes, that is, what is the character of their work? A O, I think assistants to the others.

Q What? A Assist the others. We have boys in the office who file away information, &c., file away—

Q How many boys? A O, generally have three or four.

n of Wheaton.

Q How many traveling men are there? A O, we generally have two or three, best of my recollection.

Q Who are they?

Mr. Pease: Go ahead, give him all the information you can.

A Well, there is a gentleman by the name of McFall, I can't recall his initials; we have a man in New York City named Thompson, does quite a bit of traveling around, also stationed in New York. I think Mr. Wright is traveling for our company, but I am not certain of it.

Q What has become of the red bound books of the Lumbermen's Credit Association? A I don't know.

1011 Q When did you last see any of them? A I think a year ago or so, I am not positive as to the date, but it is about as far back as that.

Q What did you do with such parts of the red bound book as you used in connection with the January, 1902 edition after you got through with them? A I laid them on a table in the center of the office.

Q Did you see them on that table afterwards? A Did for a time, I guess. Few days, possibly.

Q What was then done with them? A I don't know what became of them.

Q Wasn't a file of them preserved and kept in one of the vaults in your office? A I don't know that.

n of Fuller.

HEBER FULLER called as a witness on behalf of defendants, being duly sworn, testified as follows:

Direct Examination by Mr. Pease.

Q Please state your name? A Heber Fuller.

Q What is your business or employment, Mr. Fuller? A I am clerk and rater for the Lumbermen's Credit Association.

Q Were you during 1901? A No, sir. Yes, sir, I was a rater part of 1901, November and December.

1012 Q Did you work on the January, 1902 edition of the reference book published by that Association? A Yes, sir.

Q What did you have before you while working on this revision, the revision of this January, 1902, edition of the refer-

ence book, just explain the method or way in which you did this revision work. A Well, the main or primary material used was a blank called the revision blank, each blank supposed to cover a town, and we had a large amount of incidental information besides that we had sent out for.

Q In what kind of a book did you keep or make a record of the changes made during this revision? A You mean in what book were the changes?

Q Yes, indicated?

Mr. O'Connor: Read the question.

Question read.

Mr. O'Connor: I object to the question as assuming a fact that hasn't been by this witness that the record was kept of any changes, and as leading.

Mr. Pease: Strike out that question.

Q Did you make any memoranda or record during that revision? A Yes, sir.

Q In what? A In a black bound book, manila bound book ruled off for the purpose.

Q What if anything did it contain? A It contained a copy of the previous issue of the Lumbermen's Credit
1013 Association book. These towns were cut out alphabetically and put in the manila book I speak of, a black bound book and then the changes were made against those names and lists.

Q In doing this work how did you go about it, explain it in detail. A Well, the first thing I did was to take a revision blank covering the town I was supposed to be working on, make the changes that appeared on the blank, in case there was any cases there where the information on the blank didn't entirely make clear or close up, I referred to my regular files.

Q What did the regular files contain? A They contained the special reports, special statements that accumulated during the past year; we also had a lot of information of the same sort which was gotten in connection with the revision work, personal reports and personal statements, those didn't go into the file however, until after the revision was over with.

Q And what other sources, original sources of information did you use? A Why, we had various, what we might call incidental forms of getting information. We had what we call a postal card for delinquent slips, delinquent blanks, per-

sonal statements, special reports, press clippings, these prepared lists from railroad companies, law bulletin information, information from special agencies in smaller cities
1014 that would be covered by correspondence, personal correspondence information.

Q Do you recall any other? A Why, we had lists of subscribers, inquiring subscribers, that is, sending out to people who inquired on certain parties for information in regard to their experience in handling the account of that party.

Q What others? A I don't recall any more just at present. I know there was some more, a few.

Q How about country yard lists? A Yes, sir, that was one we used.

Q And reports from the Secretaries of retail lumber dealers' associations? A Yes, sir, we commonly get quite a lot of information from that source.

Q Well, did you have information of that character? A Yes, sir.

Q And how about information from subscribers' weekly reports? A Yes, sir, we get those.

Q Did you refer to trade journals or paper reports? A To a certain extent, yes, sir, not very much though.

Q I mean did you enumerate them in the list? A Not this time, no, but I should.

Q Did you have such reports? A Yes, sir.

Q And did you have reports from the collection department? A Yes, sir, those are used to some extent.

1015 Q Did you have any other book? A Yes, sir, we had a book called the red bound book which could be referred to in case the rater thought it was advisable to do so. It was simply an optional matter, as I understood it. Of course I don't know what anybody else understood by it.

Q What was the red bound book, what did it contain? A Why, it contained the names,—contained one of our printed lists.

Q Taken from what? A Taken from the last issue of our book, with other ratings or names attached or connected with them.

Q In what cases did you refer to that red bound book, if at all? A Well, I referred to it very little. I referred to it principally in a matter sometimes of spelling a name, that is as far as I can recollect I ever referred to it.

Q Did you ever transfer or copy any name or rating from the red bound book to your printer's copy?

Mr. O'Connor: Objected to as leading.

A No, sir, I never did.

Q Now, in cases where the information contained on the revision reports was incomplete or unsatisfactory, what if anything did you do? A I made a further investigation.

Q In what way? A In various ways, it depended
1016 altogether upon the case, what kind of a case it was.

Q Explain it by illustrating. A If there was a case where our previous rating had shown a man worth $5000 and the revision blank of the current work showed a heavy increase, something like twenty-five to thirty thousand, why I would investigate to know how it came about, whether our previous rating had been too low he whether the man had made money in the meantime justifying that increase.

Q In what way did you make the investigation in such cases? A Commonly by letter to the correspondent in the town, also by a personal statement blank.

Q In what cases did you refer to the files in the office? A Well, in similar cases I would refer to the file, I would go to the file first and if the file didn't have anything that would throw light on the matter I would write.

Q What did you do in cases where you had no revision blank from a given town if there were such cases?

Mr. O'Connor: Objected to as leading.

A Well, a postal card was used in that cast most often.

Q Well, what if anything else did you do? A Well, the postal card was the course, towns like that were not very frequent because they sent out revision blanks and wrote the correspondent till they got something in on them; I don't recall very many cases where that feature obtained.

Q Well, in making these changes in ratings in this
1017 revision what did you act upon, Mr. Fuller? A I acted upon the information before me that had been obtained for that purpose.

Mr. O'Connor: Objected to as leading.

Q Obtained in what manner? A Obtained by our investigation.

Q And from whom? A From our correspondents and various sources of information.

Q Did you make any change in the ratings where you had no revision blank or other original source of information before you?

Mr. O'Connor: Objected to as leading.

A No, sir.

Q About what was the proportion of changes in the rating during this revision? A It is pretty hard to answer that, it differs in different parts of the country, in saw mill sections or newer sections changes are more numerous than in the settled sections.

Q Well, what would be the average? A Well, I should say a fair average would be something like three or four or five per cent. That is only a guess, I never figured it out, never tried to.

Q What if any use did you make of this red bound book during the time that you worked on this revision? A Well, I think I answered that question before. I simply referred to it in case,—chiefly in my revision, in the way of spelling. Sometimes the names would be a little bit twisted
1018 around, printer's mistakes, one thing and another, I referred to it in that event.

Cross-Examination by Mr. O'Connor.

Q You are now in the employ of the Lumbermen's Credit Association? A Yes, sir.

Q How long have you been in its service? A Since the 23rd day of October, 1901, near as I can recall, about that time.

Q Were you in its employ before that time? A Yes, sir.

Q During what period of time were you in its service before that date? A From November first, 1895 to March 17, 1898.

Q What are your duties? A I am what is called a dictator of reports, also a rater.

Q What are your duties as a rater? A Why, I rate for the book at the time the regular revision is made; I also have more or less to do with the every day rating.

Q You assisted, I understand, in the revision of the January, 1902 edition? A Yes, sir, I did.

Q What states did you revise in that edition? A I don't know as I can recall all the states I worked on at that time.

Q Do you recall any of them? A Yes, I can recall
1019 Florida.

Q Any other states? A Mississippi, I think I worked on.

Q Any other states? A Massachusetts, I believe.

Q Any other states? A There was a couple more but I can't recall them just now. Depos Hel

Q Describe the red bound book to which you referred. A The red bound book?

Q Yes. A It was a manila covered book, the inner part made up of paper, ruled paper,—rules letter paper I should call it, and in each sheet, on each sheet is pasted a clipping from the previous issue of our Lumbermen's reference book.

Q By clipping, you mean a page? A Yes, sir, a page.

Q Leaving a margin all around the page? A No, the page is not put in there entire, it is a clipping from a page, the margin that occurs there is in the book proper.

Q Isn't the sheet on which the page is pasted larger than the page? A Yes, sir.

Q So that a large margin is left around the page? A Yes, sir.

Mr. Pease: You mean at each side, not around.

Mr. O'Connor: Yes, on each side, at the top and bottom.

A There is none at the top and bottom, merely on each side.

Q What were on those pages besides what appeared on them in the original book? A There were ratings there.

Q Where, after the names? A They were put on 1020 either before or after the names.

Q Do you remember which? A Well, I think that varied.

Q How many ratings were after each name besides the original rating of the Lumbermen's Credit Association? A Well, I should say there was two.

Q Were those ratings put in separate columns? A You mean one after the other, or —I don't quite understand you.

Q You say there were two ratings? A Yes, sir.

Q Two sets of ratings? A Yes, sir.

Q Was one set put in one column and another set put in another column? In other words, were the two sets separated by columns? A Why, no, sir.

Q Simply one was put after the other? A Yes, sir.

Q With a space between them? A Yes, sir.

Q What ratings were those? A Well, I couldn't say. I suppose they were from some other agency.

Q What other agencies? A Well, I—as near as I know from Bradstreet and Dun.

Q R. G. Dun & Company? A Yes, sir.

Q Did you have any key to those ratings? A In my case wouldn't be necessary; no, sir, I didn't have a key.

Q Did you understand them? A Yes, sir.

Q How did you become familiar with them? A I worked for both those agencies.

1021 Q How long did you work for Bradstreet? A I worked there about a year and a half, I should think.

Q How long did you work for R. G. Dun & Company? A About eight years.

Q There is quite a difference between R. G. Dun & Company's ratings and Bradstreet's ratings, is there not? That is, in the characters used to represent the ratings? A There is some difference, not a great deal, though.

Q Well, one familiar with the ratings would readily distinguish the difference, wouldn't he? A Why, I should think so.

Q You readily recognized one of these sets of ratings as R. G. Dun & Company's, and the other as Bradstreet's didn't you? A Why, yes, sir, I took them to be such.

Q You say that you were in the employ of the Lumbermen's Credit Association prior to 1901? A Yes, sir.

Q In 1898 and prior years? A Yes, sir.

Q Was any red bound book made up during those years?

Mr. Pease: Objected to as not cross examination and as not referring to any reference book involved in this case, and we advise the witness not to answer the question, nor any question relating to any reference book prior to January, 1901.

Q Do you refuse to answer the question? A I don't know what my rights are in that respect. Have I a right to refuse?

1022 Mr. Pease: Yes, sir.

Mr. O'Connor: In my opinion, no; if you ask me for my opinion.

A It is so long ago I can't remember very clearly about it any way. You must remember I worked in six or seven different agencies since.

Q Did you have anything to do with the making up of the red bound book during those years? A No, sir, nothing whatever.

Q Did you see it made up? A No, sir, never saw it made up.

Q I understood you to say that in addition to the ratings

of R. G. Dun & Company and Bradstreet which appeared in the red bound book of January, 1902, certain new names appeared in the book? A I don't believe I did say that, did I?

Q I understood you to say it. Did any new names appear in the red bound book? A Why there were new names there, yes, sir.

Q How were thew written in the book? A With a pencil.

Q Were there any ratings after those new names? A My recollection of it is that there were ratings in most cases.

Q What ratings appeared after those names? A My understanding of it is that those names were considered in that book from the office book, our regular office or change book.

1023 Q Answer my question, Mr. Witness, what ratings appeared after those names? A Why, the rating that applied to them, our own rating.

Q Did any other rating— A No, sir, not to my knowledge.

Q Only your own rating? A Only my own rating, as I recollect.

Q Didn't Dun & Company's rating and Bradstreet's rating appear after those names? A No, sir, not as I recollect them.

Q What did you do with those names? A Those names were supposed to go in the,—in my copy work.

Q I am not asking you what was supposed, I am asking you what you did with those names? A I transferred them, as a rule.

Q To what? A To my copy book.

Q Printer's copy? A Yes, sir. That is, where I thought I ought to do it, you understand; I didn't transfer them without some reason for it.

Q Well, did you transfer them or not? A I transferred them when I found out they should be transferred, yes, sir.

Q When did you find out they they should be transferred? A After I had written out and investigated the cases. That is, provided, you understand, if the name was put in the book without a rating, it was my business to get a rating

1024 for it; if the rating already stood there and we had records in our office to substantiate it, I simply transferred it.

Q I understood you to say there was a rating after some of those new names? A Yes, sir.

Q In those cases, what did you do? A Why, usually in my cases I got the records out to see if the rating had been well taken by the party who fixed the rating, that is, if it was borne out by the information that he had to work on.

Q Who fixed those ratings? A As a rule it was the rating clerk; we had two of them there at the time.

Q What was his name? A I can't recall; Miss Moore is the one that has been doing the rating there for years.

Q What other person? A Well, the party doing it now, his name is Howard.

Q Did those two persons fix the ratings after those new names?

Mr. Atwood: Where do you mean?

Mr. O'Connor: The witness understands, we are talking about the red bound book.

Mr. Atwood: No, the witness aint talking about that.

Mr. O'Connor: You oughtn't to make a statement of that kind.

Mr. Atwood: Ask him, if he says he is, that is all there is to it.

Q You understand that we were talking about the red 1925 bound book, didn't you? A I understood you meant the names in the black bound book.

Mr. Pease: In the printer's copy.

Q I told you that I had understood from your testimony— A I misunderstood you.

Mr. Pease: Let the witness explain.

Q —that in addition to R. G. Dun & Company's ratings and Bradstreet's ratings which appeared in the red bound book, certain new names appeared in it? A Yes, sir.

Q Did they or not? A Yes, sir, they did.

Q Did those new names have any ratings after them? A In the red bound book?

Q In the red bound book? A My recollection is they didn't.

Q What? A They didn't.

Q None of them? A No, sir, not as near as I can recall it.

Q They didn't have any of Bradstreet's ratings after them? A I don't think so.

Q Nor any of Dun's ratings after them? A No, sir.

Q Nor any of the Lumbermen's Credit Association ratings? A No, sir.

Q What did you do in regard to those names, new names? A Those names were put in there, I suppose for new
1026 names I suppose when there was occasion when we had a name from some other source which would correspond to the names there I sent out and got information for it and rated it.

Q Where were these new names obtained from that appeared in the red bound book? A Couldn't tell you, I suppose they came from several sources.

Q Know whether any of them came from Dun & Company's book? A No, sir, I couldn't say as to that at all.

Q What did you do in regard to those new names? A In my revision I simply used them sometimes as confirmatory matter, if we had a case, as we very frequently did have where a man,—where our correspondent had included a new name on his list without saying much about him probably for the reason the party was a new dealer in that section, I would refer to this list sometimes and if the name corresponded I sent out and then got a report on him.

Q Supposing you didn't get a report? A Well in my case I never used it then.

Q Did you in every case obtain a report on a new name before you transferred the new name to the revision sheet? A I in every case obtained information that would justify some sort of a rating, otherwise I didn't use it.

Q You say that after the names R. G. Dun & Company's ratings and Bradstreet's ratings appeared? A Yes, sir, that is my understanding of it.

Q Did you refer to those ratings in fixing the ratings
1027 on the revised sheet? A I never did, no, sir.

Q You never made use of them at all? A No, sir.

Q In any way? A No, sir.

Q Did you ever do any work at home,—any rating at home? A Yes, sir, I have done some rating at home.

Q What did you take home with you to do the work? A I took my revision blanks, my black bound book, once in a while I might have taken the red bound book, not very often.

Q For what purpose did you take the red bound book? A For the same purpose we have gone over, for the purpose sometimes of comparing the name.

Q Did you ever compare the ratings? A No, sir.

Q Then, as I understand you, you never in any cases referred to the ratings in the red bound book? A No, sir.

ts of Fuller.

Q I understood you to say that in some cases the reports were incomplete or unsatisfactory; what did you do in those cases with reference to the ratings? A I pushed my investigation up to the limit.

Q Well, suppose you reached the limit and you didn't obtain all the information you wanted? A It was very rarely that we couldn't obtain something; we have a rating called a half rating which we put, that is a blank, if which we put in case the matter is partial and not complete that is done, the way I usually finished off a case of that sort.

Q Were there any other cases in which you were not
1028 able to obtain satisfactory or complete information? A Well, there may have been a very few cases.

Q What did you do in those cases? A I put the name in with a blank, left it blank. Simply included the name and let the rating go until the next issue of our supplement which would probably include it if we could get it.

Q Did you in those cases refer to any other ratings? A No, sir.

Q You said in your direct examination that it was optional with the rater to use the red bound book or not? A Yes, sir.

Q What did you mean? A That is, I mean he could use it for confirmatory purposes if he cared to, or he need not, just as he saw fit.

Q Had you received any instructions in regard to it? A Yes, sir.

Q From whom? A Mr. Clancy and Mr. Stadden, both.

Q They had told you that you could use the red round book had they?

Mr. Pease: I object to the question as leading.

A No, sir.

Q What instructions did they give you in regard to it? A They told me never to include a name from the book in any particular unless I made some original investigation and could show cause for it.

1029 Q What did they tell you with reference to the ratings in the red bound book? A Well, that applied to the ratings. I don't know--

Q I ask you what did they tell you about the ratings, R. G. Dun & Company's ratings and Bradstreet's ratings that appeared in the red bound book? A I don't understand the rating figured in the matter at all. Didn't say anything.

Q I am not asking you what you understood, I ask you

what did Mr. Clancy and Mr. Stadden tell you with reference to the ratings of Dun & Company and Bradstreet that appeared in the red bound book. A Never told me anything about the ratings, except not to use them.

Q They handed you the book did they? Who handed— A No, they didn't hand it to me. I couldn't tell you who did, some clerk in the office, probably.

Q Who gave you instructions, the clerk who handed the book to you? A No, sir, I don't know, the clerk didn't do it.

Q Who gave it to you? A Why, my instructions came from Mr. Clancy as a rule.

Q I am asking you who gave you the instructions regarding the red bound book? A You mean originally?

Q Yes. A I can't recall, it was six or seven years ago.

Q Are those the instructions upon which you have always acted? A Yes, sir. When I came there the second time I was supposed to know what to do.

1030 Q When the book was handed you after you entered their employ the second time, were no instructions given to you in regard to the red bound book? A Not at that particular time, no.

Q After you entered the employ of the Lumbermen's Credit Association the second time were any instructions given to you with reference to the red bound book? A I recall cases where I have gone to Mr. Clancy and asked him about certain ratings and saying so and so about it and he has— I know the tenor of his conversation to me always has been to make the investigation on my own account entirely and wholly.

Q Did you tell him what Dun & Company rated them at? A I don't recall.

Q In those cases? A No, sir, don't recall that I did.

Q Did you ever in any case tell him what Bradstreets or Dun & Company rated the party? A Can't recall that I did.

Q Did he ever ask you? A No, sir.

Q What either of those parties rated them? A No, sir.

Q Did you make an affidavit that was to be used in this case? A Yes, sir.

Q Before whom? A The affidavit was made before a clerk that came into the office there, I think he was from Pease and Atwood's office.

t of
uller.

Q You have talked with them about the case, have
1031 you? A No, sir, not beyond what is contained in the affidavit.

Q When was that affidavit made? A My recollection of it was made in February of this year, somewhere along there

Q Do you remember what you testified in that affidavit? A Yes, sir, very clearly.

Q Do you remember that in that affidavit you stated that these ratings in the red bound book were used by you for the purpose of comparison? A I don't recall having said it in that way, no, sir.

Q What did you say in that affidavit?

Mr. Pease: I object.

Mr. O'Connor: I call upon you gentlemen to produce the affidavit.

Mr. Pease: The affidavit was not used.

A I recall having said that Mr. Clancy's instructions were never to refer to that book for any particular purpose except where we had information to correspond; I recall having said that.

Q Did you use it in cases where your information corresponded? A No, sir. You mean use it to take the rating from the red book?

Q Mr. Clancy, you say, instructed you never to use it except where your information corresponded with the ratings in the red bound book? A That doesn't refer to the rating, it refers to the name; the name, not the rating. I con-
1032 fused the rating and the name. I started out by saying I never referred to the red book except for the name. I never referred there for the rating.

Q Did I understand you to say that Mr. Clancy instructed you never to use the red bound book except in cases where the information obtained by the Lumbermen's Credit Association corresponded with the information in the red bound book? A No, sir, you didn't understand me to say anything of the kind. I didn't say that.

Q Tell us what you said in the affidavit with reference to the red bound book.

Mr. Pease: I object. the affidavit is the best evidence of what it contained, and for the further reason the affidavit was not used in this case or any other.

Mr. O'Connor: I have a right to show what this witness stated on another occasion.

Mr. Pease: You know how to show it; this isn't the proper way.

Q Do you refuse to answer that question? A No, sir; I don't quite understand what you want me to say.

Mr. Pease: If you don't remember what was in the affidavit you have a right to say so.

Q Didn't you state in that affidavit that the red bound book was used by the Lumbermen's Credit Association for
1033 the purpose of comparison as to ratings? A No, sir, not as to ratings. If it so appears it is a misconstruction of what I intended to say, that is all.

Q What did you intend to say? A I intended to say that it was used sometimes for comparison of names and styles and spelling, that is as far as it has been used, far as my knowledge goes.

Q Did you compare each name in your printed copy or revision sheet, as you call it I believe, with the names in the red bound book? A No, sir.

Mr. Pease: Which do you mean? Do you mean in the printer's copy of the revision blanks?

Mr. O'Connor: The copy on which he made the revision.

Mr. Pease: That is the printer's copy.

A With the red bound book, did you say?

Q Yes, did you compare the names in that list? A No, sir.

Q With the names in the red bound book? A No, sir.

Q Then how could you refer-- how would you know in what cases to refer to the red bound book to ascertain whether the name was correctly spelled or not?

Mr. Pease: I object to the form of the question; in what case he did refer to it would be proper, if at all.

Mr O'Connor: He has stated that he did refer to—

Mr. Pease: Then ask him in what cases he did refer to how he knew.

Mr. O'Connor: I insist upon the witness answering my
1034 question just as I ask it. A I will answer that question. A revision slip comes in, John Smith & Company, or John Smith Brothers & Company, and we have carried them heretofore John Smith Company, I might refer to the red book in that case to see which of those two versions it would substantiate.

Q And you followed the spelling that was corroborated by the red bound book, did you? A Not always, no, sir.

n of Fuller.

Q Did you in any case? A Why, I might have done so, but I can't recall any case where I did.

Q When did you begin the work of revision on the January 1902 edition? A As soon as I came to work there.

Q In October, 1901? A Yes, sir.

Q The parts of the red bound book that you used were bound in what kind of a binding? A Why,—you mean the binding?

Q Yes. A It was bound in red, but bound in manila, if you refer to the covers.

Q The back of it was red, wasn't it? A Yes, sir.

Q That is why it was called the red bound book? A Yes, sir, red tape, or red cloth.

Q Each state was bound separately, was it not? A My recollection of it is that they were; there may have been some states, some of the larger states were bound sectionally.

Q Into several parts? A Well, two perhaps. I don't recall clearly about that.

1035 Q You speak of files, of special reports and personal statements; are the files preserved? A Yes, sir.

Q How long? A Why, in some cases they are preserved permanently, other cases they are kept a certain length of time.

Q So that you intend or try to keep a permanent record? A Yes, sir, practically so.

Q Did I understand you to say that information regarding parties is destroyed? A In some cases it is where it is very old, certain kinds of information.

Q Well, in what particular cases, in what class of cases? A Why, take what we might call the old specials sometimes are practically thrown away.

Q Special reports on parties? A Yes, sir.

Q How long after the reports are made they are destroyed? A That depends entirely upon the case.

Q I am now asking for your knowledge, so far as you know? A Why, I have known cases to be put away or destroyed five years back.

Q Have you known cases where the information was destroyed in less time? A I don't recall any cases, but I have known where it has been lost; of course that amounts to the same thing, far as we are concerned.

Q Who wrote for information where the information was

not satisfactory to you? A I did myself to a great extent.

1036 Q Did you do it all? A No, sir, there were cases where simpler forms of investigation were put in the hands of some clerk,—some other clerk.

Q Who worked on the revision of the January, 1902 edition? A There were several people besides myself.

Q Who were they? A I don't know as I can recall all of them.

Q Was Wright one of them? A Wright was in the office at the time, I couldn't say what kind of work he was doing. He had other work that occupied the greater part of his time.

Q Well, so did some of the others, didn't they? Wheaton was occupied the greater part of his time wasn't he, by other work? A Not to the extent that Wright was, no, sir.

Q But Wright did do part of the revision, didn't he? A I don't know, I am sure, what he did.

Q Didn't you and he ever talk about it? A Not that I recall, no, sir.

Q Can you recall any one else who worked on that revision work? A I recall a man by the name of Howard worked on it.

Q He still in the employ of the Lumbermen't Credit Association? A Yes, sir.

Q Is there any other persons who did revision work? A Mr. Wheaton.

Q Any other? A Mr. Stadden.

1037 Q Mr. Stadden did part of the revision work, did he? A I couldn't say positively. My recollection of it is that he did some of it, but I wouldn't say positively.

Q Any one else? A I can't remember anybody else.

Q Did Gilbert? A Of that rating? No, Mr. Gilbert wasn't employed at that time by the Lumbermen's Credit Association. You are speaking now of the January, 1902?

Q Yes. A He wasn't there at that time.

Q You are acquainted with him, are you? A Yes, sir.

Q Where is he now? A I don't know where he is.

Q Is he in the employ of the Lumbermen's Credit Association? A I don't think so.

Q Have you ever counted up the number of names in the states that you revised of the January, 1902 edition? A No, sir, I never have.

n of Fuller.

Q Did you ever count up the number of changes that were made in the ratings? A No, sir.

Q That you revised? A No, sir.

Q Have you ever talked with anybody about this case? A Yes, sir, I have talked with people in the office about it.

Q Ever talk with anybody outside of the office of the Lumbermen's Credit Association? A I don't recall having done so, unless it was my wife or family.

Q You know Wright? A Yes, sir, I am personally acquainted with him.

1038 Q Ever have any talk with him about it? A No, sir, not that I recall.

Q Do you know what this suit is about? A I have a general idea of it, yes, sir.

Q From whom did you learn it?

Mr. Pease: I object to that as not cross examination.

Q From whom did you learn it? A I saw the notice of the action in the Bulletin, to start out with, that would tell me pretty near the whole thing.

Q That the only way you have learned anything about the nature of this suit? A Yes, that is the only—why, of course I have seen an article from the paper applying to it.

Q All you learned about this suit you have learned from newspapers, have you? A Why, I might say so, yes, sir.

Q Who revised Alabama? A In the revision of 1902, January?

Q Yes. A I couldn't say positively who did it, I know I didn't.

Q Who revised Georgia? A I believe that was one of my states, too. I don't know whether I mentioned that or not in the list.

Q Do you now recollect that it was one of your states? A Yes, sir, it was.

Q You can't recall any of the other states you revised? A I think that was all. I only had about four or five or six states.

1039 *Re-direct Examination by Mr. Pease.*

Q How long did you work on this revision? A I worked from October 23 until the book was out.

Q You remember when that was? A My recollection of it is, about the 11th of January,—12th of January, something of that sort.

Q Did you do anything else during the time? A During the last two weeks I did, from the day after Christmas up to the time the book came out I was working on reports also.

Q Up to what time, or how long before the publication of the book were changes made in it? A Changes were made up to the very last moment.

Q And that was how long before it was published? A It wasn't very long, I couldn't say how long, only a few days.

Q Did you have charge of getting the additional information as to the names included in the states which you were revising?

Mr. O'Connor: I object to that as leading, going over the same ground the second time.

Q Who had charge of getting the additional— A I had charge of part of it. I was supposed to look after my own letters, of course the part which I call the simpler part was looked after by the party who had that in hand, 1040 usually a temporary clerk.

Q Well, what if anything did you do with reference to the names upon which they were to secure the additional information? A I kept a list of them.

Q Does it often happen that letters or information are mislaid or lost? A Yes, sir, it happens very frequently.

Q Have you any idea as to the number of letters that are received daily during the revision work of one of these editions?

Mr. O'Connor: Objected to as immaterial.

A Nothing beyond that there is a very large volume of them.

Q Does the Lumbermen's Credit Association publish a supplement? A Yes, sir.

Q How often?

Mr. O'Connor: Objected to as immaterial.

A Monthly.

Q How much of the time between October 23 and January 10 did you work at home on this revision? A I didn't work very much there at that time, I don't suppose over two or three nights altogether.

Q Did you use a rating of 100? A Did I use a rating of 100?

Q Yes. A Why, there is a rating of that sort and I may have used it in very rare cases; but 100 is a rating that

is put in where our last—where we can't get informa-
1041 tion in time to include it in the book, or we fail for some reason or other, and it is put in signifying that we have no information in the office on which to base a rating.

Mr. O'Connor: I object to the answer as not responsive to the question.

Q From whom did you obtain information, or was information obtained as to the new names put in the printer's copy? A Why, the new names came to me—

Mr. Pease: No; read the question.

Question read.

A You mean the rating?

Q Yes, regarding the rating. A I got the information myself by sending for it.

Q From whom, or to whom? A To the correspondents and other sources.

Mr. O'Connor: I object to the question as calling for secondary evidence. The letters of inquiry would be the best evidence.

Q Did you transfer any new names to the printer's copy which you did not have original information on?

Mr. O'Connor: Objected to.

A No, sir.

Q And upon which to base your rating?

Mr. O'Connor: Objected to as leading, and calling for a conclusion; also on the ground that it is going over the
1042 same matter the second time. A No, sir, I did not:

Adjourned to 2:30 P. M. of the same day.

2:30 o'clock P. M.

Met pursuant to adjournment.

Present, as before.

ABRAHAM LINCOLN KNEFLER called as a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Pease.

Q Please state your name? A Abraham Lincoln Knefler.

Q Where do you reside? A 6021 Calumet avenue.

Q What is your occupation or employment? A Rater, Lumbermen's Credit Association.

Q What was your employment in 1901,—in the fall and winter of 1901? A Rater.

Q For whom? A Lumbermen's Credit Association.

Q Did you work upon the revision of the January, 1902 edition of the Reference book? A I did.

Q What did you have before you in doing this revision work; how did you do it, just explain the method which
1043 you used? A Prior to the commencement of my work there has been sent out from the office revision blanks to our correspondents; as these came in they were alphabetically arranged according to states; states that we assigned me, I took these blanks—

Q Which blanks? A Revision blanks that we had received from our corr spondents, together with a—pasted together with what is called printer's copy, consisting of the list of names that had appeared in print in what was called the July, 1901, edition of the reference book of the Lumbermen's Credit Association, on the margin of which were added the names that had been gathered during the interim of the books.

Q What was this called, printer's copy? A Printer's copy.

Q How was it made up, bound together? A Well, there were blank sheets on which were pasted the printed slips containing the names that appeared in the July, 1901 edition of the reference book.

Q On what were they pasted? A On blank paper.

Q Blank or ruled sheets of paper? A Ruled.

Q Where were they pasted? A In the center.

Q How were they bound together, in states? A In states.

Q With what were they covered? A Manila boards.

Q In what color were they bound? A In black.

Q What if anything else did that contain aside from the printed parts, printed page of the last previous edition
1044 of the Lumbermen's Credit reference book. A Names that had been transferred from the office tickler?

Q Anything else? A Together with any ratings that we may have assigned—that may have been assigned.

Q Following the new names? A Yes.

Q Now in what way did you take up this revision work? A State by state.

Q Well, now, just how did you do the work, what did you consider first? A The revision blank.

Q Well now, what did you do with the revision blank? A Taking the first name on the revision blank, comparing it with that in the printer's copy alphabetically, the first name.

Q Yes. A And if the present data—

Q What do you mean by "present data"? A That is, the data contained on—the information contained on the new revision blank just received from the correspondent corroborated the rating that we had in print it was allowed to stand; where the correspondent on this last revision blank furnished information indicating a normal indrease in the rating this was given without question.

Q Well now, what do you mean by that, "this was given without question"? A Well, we assigned the rating based on the new information.

Q What, if anything, did you do in other cases? A Where the information furnished by the correspondent 1045 on this late revision blank was very much at variance, the—

Q With what? A Very much at variance with the rating in print, the rating that we had assigned previously, I called for all the data in the office, in an attempt to verify this or otherwise.

Q Of what did that data consist? A It consisted of personal statements in many cases.

Q All right, what else? A And detailed reports from correspondents, trade reports, that is reports furnished by people in the trade voluntarily.

Q What else? A Law records, bank references or bank information, information that we receive regularly from Secretaries of lumber associations, newspaper clippings, our travelers' reports, our city reports, information that we had received through the collection department, information that we had received on delinquent reports, and a number of other sources.

Q Can you recall any others? A Trade references.

Q And any others? A Trade journals; I suppose that is included in newspaper clippings.

Q How about subscribers' weekly reports? A Subscribers' weekly reports, yes.

Q And lists from railroad companies, did you have those?

Mr. O'Connor: Objected to as leading and suggestive.

A Yes, railroads prepare a list of saw mills and lumber

manufacturers, lumber dealers, on their roads that we
1046 use, that is in order to get new names.

Q How about country yard lists?

Mr. O'Connor: Same objection.

A Country yard lists.

Q What do you mean by that? A It is a paper blank that is sent to subscribers; not only to subscribers but to the trade that run a number of yards throughout the country. These are sent to them and they fill out the names of the towns and the gazetteer matter of the town.

Q How about special agency reports?

Mr. O'Connor: Same objection.

A Yes, we have an arrangement with special agencies by which they furnish up reports.

Q Where are they located, as a rule? A In the large cities.

Q How about inquiries from subscribers?

Mr. O'Connor: Same objection.

A Yes, a good deal of information is obtained from the ticket of inquiry sent in by subscribers.

Q How about subscribers' lists of customers?

Mr. O'Connor: Same objection.

A Yes, have another blank that is sent to subscribers asking for the list of their customers that we keep posted in that way we get many new names and some data.

Q What did you do with reference to these different sources of information which you have enumerated? A
1047 Well, these were carefully gone over to see if there was anything that would in any manner corroborate this late information furnished by our correspondent.

Q Then what did you do? A Where information was found on the records that we already had corroborative of this later information from our correspondent, why I gave the—or I assigned the rating based on the new information.

Q What did you do in other cases? A Well, in other cases, where I could find no data of any kind to confirm in any way this later information from our correspondent, I investigated it, that is, where the information was very discrepant.

Q Well, what do you mean, in what way did you investigate? A Well, in sending out a statement blank to the party reported upon or writing to the correspondent who had

furnished the information, sent information, calling his attention to the discrepancy and asking in the first place if it were an error,—and asking if it were not an error.

Mr. O'Connor: I object to the witness' answer as the correspondence is the best evidence of what he did.

Q Then did you have before you what was known as the red bound book? A I had it handy.

Q Will you describe what that book—how it was made up, what it contained? A Made up mechanically in the same manner that the black bound book was.

Q How was it bound? A In red,—except that it was 1048 bound in red instead of black.

Q What did it contain aside from the printed page? Printed part of the last previous edition of the reference book? A Well, it contained names that had been obtained from other sources.

Q Anything else? A Together with key ratings, new towns that had been obtained from other sources.

Q What, if any use did you make of this red bound book in doing this revision work? A For an occasional comparison.

Q Well, under what circumstances did you refer to it? A Well, where the information given on the revision blank by the correspondent was very much at variance with the rating that had previously been assigned after—

Q Previously assigned where? A Previously assigned in the reference book of the Lumbermen's Credit Association.

Q In what edition? A In the July, 1901 edition.

Q All right, now go ahead. A Where I had exhausted every resource in the office and found no information to corroborate or to bear out this later information, I compared the information with that indicated by the ratings in the red bound book.

Q Was this of frequent occurrence or not?

Mr. O'Connor: Objected to as leading.

A Very few times, comparatively speaking.

Q Then what did you do after referring to the red 1049 bound book? A Well, if the comparison was favorable to the information that I had received from the correspondent, I assigned a rating based on this information.

Q What information? A The information received from our correspondent.

Q Did you put any new name in the printer's copy with or without a rating that you did not have original information of some character before you upon which to base it?

Mr. O'Connor: I object to the question as leading and calling for a conclusion.

A No.

Q Did you transfer or copy any name or rating from the red bound book to the printer's copy?

Mr. O'Connor: Same objection.

A No.

Q Did you in each instance in which a change of rating or a new name and rating was made by you in the printer's copy have original information in your possession upon which to base it?

Mr. O'Connor: Objected to as leading and calling for a conclusion, and because it is going over the same ground a second time.

A Yes.

Q Were there any new names and ratings in the printer's copy which you did not make— A Yes, sir.

Q —or put in there yourself? Where were they taken 1050 from, if you know? A I always supposed they were taken—

Mr. O'Connor: Not what you suppose; question calls for "you know".

Q Did you make any comparison of such new names and ratings which you found in the printer's copy, and if so, with what did you compare them? A Compared them with the revision blank.

Q I am referring now to new names appearing in the printer's copy which you didn't put in there yourself; did you compare those names with anything? A With the revision blank.

Q Didn't you compare them with anything else? A No.

Q The office tickler? A O, yes, the office tickler.

Mr. O'Connor: Question objected to as leading.

Q Anything else? You understand what names I refer to, don't you? A Those that had been transferred prior to the time I took hold of the book,—of the printer's copy?

Q Of the printer's copy, yes. Did you compare those names with the office tickler and the supplement?

Mr. O'Connor: Objected to as leading.

A I compared them with the office tickler and the supplement.

Q And what did you find from that comparison; did they agree or not? A They agreed.

1051 Q How long did you work on the revision of this edition.

Mr. O'Connor: What edition?

Mr. Pease: January, 1902.

A From November first, 1901 to the time the book was issued.

Q When was that? A Shortly after the first of January, 1902.

Q Up to what time were corrections or changes made in this edition, that is, how shortly before it was published? A General changes were made up to about December, 25. Special changes were made up to the time the book was ready for binding, or almost to that time.

Q What is the supplement that you referred to? A Well, it is a supplement to the book.

Q Issued when? A It is issued once a month, contains all the changes that have occurred, that is all the changes that we had received during the interims.

Q What interim do you refer to? A Of the supplements, that is, from one supplement to the other.

Q How soon after the publication of each book is the first supplement issued? A First of January—

Q Supposing a book was issued first of January, how soon after that was the first supplement issued? A One month after.

Q Then how often subsequently? A One month.

Q Now what does each succeeding supplement contain? A Contains what is called sheet matter.

1052 Q How about the matter that is in the previous supplement or supplements? A Yes.

Q Yes, what? A It is cumulative, the supplement is.

Q What do you mean by that? A That is, to the January supplement are added the February changes, and to the March supplement are added the changes that had occurred in the January and February supplement, and so on.

Q That is, each supplement with the corrections, the matter published in the previous supplement?

Mr. O'Connor: Objected to as leading.

A Yes, sir.

Cross-Examination by Mr. O'Connor.

Q What is your business? A Rater, Lumbermen's Credit Association.
Q You are now in its employ are you, in its service? A Yes, sir.
Q How long have you been in its employ? A I entered the employ of the Lumbermen's Credit Association November first, 1901.
Q Had you been in its employ before that time? A Yes, sir.
Q When? A I entered its employ in the spring of '99.
Q How long did you remain in its service after '99? A Till the spring of 1900.
1053 Q Up to the spring of 1900? A The latter part of March, 1900.
Q 1900? A Yes, sir.
Q Were you in its service between March, 1900 and November, 1901? A Part of March, 1900.
Q I say between March 1900 and November, 1901? A No.
Q Have you been a rater since November, 1901? A Yes, sir.
Q That has been your work? A Yes, sir.
Q You worked as a rater on the January, 1902, edition? A Yes, sir.
Q What states did you revise? A I don't recall all, among others —
Q How many states did you revise? A I don't know.
Q Can you give us an approximate idea? A Five to ten.
Q What were they? A Connecticut, Maine, Maryland, Pennsylvania, North and South Carolina.
Q Did you revise any of the southern states, any others besides North and South Carolina? A Maryland.
Q Any besides those that you have mentioned? A I don't recall.
Q Did you revise Mississippi? A No.
Q I understand you to say you revised a state at a time, is that correct? A Yes, sir.
Q The red bound book was bound in sections or states, was it not? A Yes, sir.

of
n L.

Q You said that it was bound with manila paper?
1054 A Well, I suppose that is the technical name for it.
Q And it was called the red bound book because there was a red back to it? A Red binding, yes, sir.
Q When you examined a particular state you had the red bound book, or the part of the red bound book covering that state, did you not? A Yes, sir, or convenient.
Q That is, you used it in connection with your work on that state, did you not? A Yes.
Q What did that red bound book contain besides the oirginal printed matter? A Contained the names and manuscript, I understand, obtained from other sources.
Q It contained new names not in print? A Yes, sir.
Q How were those names written on it? A In the margin.
Q In ink or lead pencil? A Lead pencil.
Q From what sources were those names obtained?
Mr. Pease: If you know.
A My understanding was that they were obtained from other reference books.
Q What other reference books? A Well, we had there among others the Lyon Agency.
Q Did you have R. G. Dun & Company's? A Yes.
Q And Bradstreet's ? A Yes.
Q Were there any ratings in that red bound book? A Yes, sir.
Q Where were the ratings? A Following the name.
Q How many ratings followed each name? A Two
1055 in some cases, three in others.
Q Were the different sets of ratings placed in columns? A No, they simply followed the name.
Q With a space between? A Yes.
Q What ratings were they? A They were key ratings of the agencies mentioned.
Q What agencies? A The Lyon Agency, Furniture Agency.
Q What? A The Lyon Furniture Agency, R. G. Dun & Company, and the Bradstreet Company.
Q Were you furnished with the keys to interpret those agencies? A I don't know whether I was furnished or whether I made my key. I was familiar with the ratings at the time.

Q How did you get R. G. Dun & Company's key? A I was in their employ for eight years.
Q How long? A Eight years.
Q You were well acquainted with their ratings, then? A Yes, sir.
Q Their system? A Yes, sir.
Q And didn't you have one of their keys? A No, not their key.
Q When did you quit their service? A In the spring of '99.
Q Under what circumstances? A To enter the employ of the Lumbermen's Credit Association.
1056 Q What? A To enter the employ of the Lumbermen's Credit Association.
Q How did you know that their system might not have been changed between the spring of '99 and November, 1901, nearly three years? A There is a possibility that it was.
Q Didn't you then have a key so as to know what their system was, in November, 1901? A I think I made my key last year.
Q Where did you get it? A Well, I just made it from memory, my Dun key.
Q Well, you have just stated that their system might have been changed during the three years,— A So it might.
Q —that had elapsed after you left their service. Did you make no inquiry to ascertain whether it had been changed or not? A No.
Q Was any key furnished to you? A I think possibly there was.
Q What key? A The Bradstreet key. No, I wont say positively that there was.
Q Well, was there or not, any key furnished you in connection with the red bound book?
Mr. Pease: Objected to as immaterial.
A I don't know.
Q Were you ever in the service of the Bradstreet Agency? A No, sir.
Q How did you know their ratings, how are you able
1057 to interpret them unless a key was furnished you? A I don't know them to-day.
Q Have you never been able to read any of them? A Yes.

Q How did you become acquainted with them? A I probably had a key.

Q Who furnished that key to you? A Probably done in the first place, originally, by the Lumbermen's Credit Association.

Q Who furnished it to you? A The person?

Q Yes. A I don't know.

Q Was it handed to you with the section of the red bound book covering the states you were to revise? A I don't know.

Q Can't you remember when it was furnished to you? A That was a very minor thing in the—

Q Answer my question, yes or no. A No.

Q You spoke of a third set of ratings, the Lyon Furniture Company's ratings, was it? A Yes, sir.

Q How do you spell the work Lyon? A L-y-o-n, or s, I am not sure.

Q How did those ratings compare in number with the ratings of Bradstreet and Dun?

Mr. Pease: Objected to as immaterial. What has that got to do with your case?

Q Answer the question. Well, I should say comparatively few.

Q Was any key of then Lyon Furniture Agncy or 1058 Company—was that Furniture Agency or Furniture Company? A I don't know. Furniture Agency.

Q Let us call it the Lyon Furniture Agency. Was any key of that concern's ratings furnished you? A We had the book in the office.

Q The book itself? A Yes, sir.

Q Was a copy of that concern's book furnished to each rater? A No.

Q Then all raters didn't have that company's ratings? A Yes, sir, they did.

Q How did those to whom a copy of the work was not furnished know how to interpret the ratings of that concern? A The book was at the service of the office, in general use.

Q Was there only one copy? A I think there was only one copy.

Q And each rater took it in turn as he wanted to use it, is that correct? A Yes.

Q The key was in that book, was it? A Unless they had made copies of it and used it in that way, I don't know.

Q But you used the original book? A I used the original book, when I had occasion to use it.

Q Now, when you began your revision work you began with the first name on the printer's copy that was furnished to you, did you?

Mr. Pease: I object.

1059 A No.

Q Did you take the names in the order in which they appeared on the printer's copy? A Yes.

Mr. Pease: Or on the revision blank?

A On the revision blank.

Mr. Pease: Don't say yes to Mr. O'Connor unless he tells the truth; we have got to watch him.

Q The revision blank was, as I understand, simply the report, was it not? A Yes.

Q Sent to you in reply to an inquiry? A Yes, sir.

Q Did you take the names in the order in which they appeared in the revision blanks, or in the order in which they appeared on the printer's copy? A Revision blanks.

Q What did you do with reference to a name? Let me understand your process of work; what did you first do? A Well, I compared the name.

Q You found the name on the revision blank, did you? A On the revision blank, compared it with the name in print, or in the printer's copy, to see that the spelling was right.

Q That is, you compared it as it appeared in the revision blank, with the same name as it appeared in the last issue of the Lumbermen's Credit Association? A No, sir.

Q What? A As it appeared in the printer's copy.

Q But the printer's copy contained a copy of the last issue of the Lumbermen's Credit Association, did it not? A With added names from the office tickler.

1060 Q Yes, with added names and added ratings? A Yes, sir.

Q As you have explained. Well now, you say you compared it with the name as it appeared in the printer's copy; what comparison did you make? A In the first place to see that the name is correctly spelled.

Q In both? A In both. Then examine the data that is furnished by the correspondent on this blank.

Q Before you proceed to the data, let me understand the full process of comparison; is that all you compared, simply the name? A That is all.

Mr. Pease: How about the classification?

Mr. O'Connor: Don't, please Mr. Pease; let me finish my examination.

Q What else did you compare besides the name? A The classification.

Q What else? A And the rating.

Q Now what ratings did you compare? A There were no ratings on the revision blank; there was simply data on the revision blank. We made the rating.

Q Well, what rating, you say you compared ratings; now what ratings did you compare? A I compared the data on the blank, the data furnished by our correspondent, with our rating.

Mr. Pease: That is right.

Mr. O'Connor: I object to counsel making any suggestions to the witness.

1061 Mr. Pease: I want to encourage him.

Q Suppose that there was a case where there were two ratings in connection with your rating, that is R. G. Dun & Company's rating and Bradstreet's rating, as well as your rating appeared after this name which you were comparing—

Mr. Pease: I object very seriously, you are trying to mix this witness up the same as you did one other witness, in confusing in his mind at least, the red bound book with the black bound book.

Mr. O'Connor: I object to counsel making anuy suggestions.

Mr. Pease: That isn't a suggestion, that is a statement for the record. You are asking the witness in reference to a comparison between the revision blank and the black bound book or the printer's copy, and there was no double set of ratings in the printer's copy, as you know, and you ought to be fair enough with the witness not to try and mislead him.

Mr. O'Connor: I object to counsel—

Mr. Pease: I want that in the statement, and if we were before Judge Kohlsaat I would say more.

Mr. O'Connor: I object to counsel interrupting the examination for the purpose of making speeches and making suggestions to the witness.

Mr. Pease: Counsel will interrupt the examination just as often as the examining counsel attempts to mislead the witness.

Q Mr. Knefler, did I understand you to say that in fixing the ratings you used the red bound book? A No, sir.

1062 Q Did you refer to the red bound book? A Only in occasional cases.

Q In what cases did you refer to the red bound book? A Where the information obtained from the correspondent was very much at variance with the information that we already had, and where our records did not corroborate the information thus obtained from the correspondent I referred to these ratings in the red bound book.

Q That is, to R. G. Dun & Company's and Bradstreet's ratings— A And Lyon's.

Q —do you mean? A Yes, sir.

Q After referring to them what did you do? A What is that?

Q After referring to those ratings in such cases what did you do? A Well, where the comparison was favorable to the information that I had obtained from my correspondent, I used the information thus obtained from the correspondent.

Q That is, if you found that the information obtained from your correspondent was confirmed by the ratings of R. G. Dun & Company and Bradstreet, you fixed a rating—

Mr. Pease: And Lyon's.

Q —did you? A Not confirmed, wasn't necessary that it be confirmed.

Q What do you mean by the word "favorable"? A Well, favorable comparison, I said. I meant that favorable to our correspondent, inasmuch as that his in-

1063 formation—that the information that he had furnished us had been in a manner confirmed.

Q By what? A Well, by the Dun and Bradstreet and Lyon ratings.

Q Were there any cases where the rating indicated by the information furnished to you differed from the ratings of the other agencies appearing in the red bound book? A I don't quite catch that.

Question read.

A In numbers of cases.

Q What did you do in such cases? A Now, let us see; that last question I am afraid I didn't understand.

Mr. O'Connor: Read the question.

Question read as follows: "Were there any cases where the rating indicated by the information furnished to you differed from the ratings of the other agencies appearing in the red bound book?"

A In every case where I referred to the red bound book it differed. I only referred to the red bound book in cases where it was at variance.

Q Where what was at variance? A The information we had received on the revision blank, with our ratings.

Q If the information furnished to you confirmed the rating given to the party in the last edition of the Lumbermen's Credit Association, did you refer to the ratings of the other agencies? A No, sir.

1064 Q In the red bound book? A No, sir.

Q Never in any case? A No.

Q You spoke of certain new names appearing in the red bound book did you not? A Yes, sir.

Q Did any ratings appear after those new names? A In the red bound book?

Q Yes. A Yes.

Q What ratings? A The Dun ratings, Bradstreet's ratings and the Lyon ratings in some instances.

Q Did the Lyon ratings appear in every case? A No, nor did the Dun, nor did the Bradstreet.

Q But one or the other appeared in every case? A Yes, sir.

Q Did it not? A Yes, sir.

Q In how many cases did the Dun ratings appear? A Majority of them.

Q In nearly every case, didn't they? A Well, yes.

Q What did you do with those names? A I did nothing with the new names that appeared in the book.

Q Nothing whatever? A Nothing whatever.

Q Didn't you transfer any of them? A No, sir.

Q To the printer's copy? A No, sir.

Q Of the states that you were revising? A No, sir.

Q Were no instructions given to you with reference to those names? A Not from the red bound book.

Q Were those names in the printer's copy when it was 1065 handed to you? A No, sir.

Q When the printer's copy was handed to you it consisted only of the printed part of the last edition of the Lumbermen's Credit Association, did it? A With the names added from the office tickler.

Q Did you make an examination to see whether the names that were in the red bound book were among the names taken from the office tickler or not? A No, no direct examination of the red book.

Q Then as I understand, you never did anything with reference to the new names that appeared in the red bound book? A No.

Q Were there any cases in the states that you revised where you couldn't obtain complete and satisfactory information regarding any names? A Yes.

Q What did you do in such cases? A If they appeared on the revision blank and were checked as being in business by our correspondent, I inserted the name in the printer's copy.

Q What did you do in regard to the rating where the information was not complete and satisfactory? A In cases where I was satisfied that the party was a small one, very small dealer and not likely to be inquired about, I simply left the rating blank.

Q What did you do in other cases? A In other cases where we hadn't sufficient data to rate on and I was satisfied that the concern was a fair sized one or a large one likely to be called for by one of our members, subscribers, I 1066 inserted what we call the hundred rating, indicating that the information at hand is not sufficient to warrant the assignment of a rating, although the party, firm or company is in business.

Q Are those the only courses you took in such cases where the information that you were able to obtain was not complete and satisfactory? A O, in those cases I tried to get the report in the usual way.

Q But when you were not able to obtain—I am now speaking of cases where you were not able to obtain complete and satisfactory information? A It was necessary to do either one or the other, leave it blank or insert the hundred.

Q Did you make any reference, in such cases, to the ratings of the other agencies? A None at all.

Q Did you never, in any of those cases look to see how such parties were rated by any of the other agencies? A May have done it, but never used them.

Q I am asking you if you ever did it?

Mr. Pease: Did what?

A What is the question ?

Question read.

Q You say you may have done it; in how many cases? A Very few.

Q What practice did you follow with reference to the other agencies,—ratings of the other agencies in such
1067 cases? A No practice.

Q That is, when did you consult the ratings of the other agencies, and when did you not consult them? A Well, that was just, you might say, a matter of curiosity.

Q What were you curious to know about? A To see if they had them, in the first place, if they had sufficient information to rate them when we couldn't get it.

Q You looked at their ratings to see of they had sufficient information to rate them upon, did you? A See if they had ratings.

Q Did I understand you to say that you looked at their ratings to see if they had sufficient information to rate them upon? A To see if they rated the people.

Q What did you do when you found that they did rate them? A Paid no attention to it except to renew our efforts to get information.

Q I am now talking about cases where you were not able to obtain the complete information, what did you do in such cases when you found that they were rated by the other agencies? A I don't think there was any case that we ever come across where we haven't finally been able to get some information, and where I see that other people could get the information I felt quite sure that we could, and even though I tried a number of authorities, sometimes without being successful, I would try further.

1068 Q As I understand, you were making your revision up to the time the book was issued, were you not? A Yes, sir, or nearly.

Q Were there not some cases where you were not able to obtain complete information before the book was issued? A There were.

Q Now in such cases, in any of such cases what did you do when you found that the other agencies rated them but you couldn't obtain complete information? A I either left it blank or inserted 100.

Q Why then did you refer to the ratings of the other agencies if you paid no attention to them?

Mr. Pease: I object to that as having been fully gone over. A Well, feeling I suppose, that if I found it in the—

that the others rated them that we could get information upon which to rate.

Q I am now talking, Mr. Witness, about the case where you say you were not able to obtain the information, what did you do in such case where you found that the parties were rated by the other agencies but you were not able to obtain the information?

Mr. Pease: Hasn't been shown that there were any such cases.

Mr. O'Connor: I object to counsel making suggestions
1069 to the witness.

A I left it blank or inserted the hundred.

Q Then, I ask again, why did you refer to the ratings of the other agencies, if you didn't pay any attention to them? A Well, as a matter of curiosity.

Q What were you curious about? A To see if the others could get information where we couldn't.

Q You say that the red bound book contained new towns obtained from other sources, do you? A Yes, sir.

Q What did you do in regard to those towns, those new towns? A Well, we—

Mr. Pease: What did you do?

A I found—well, in the first place, I had nothing to do with that.

Q Then you did nothing whatever in regard to such new towns? A No.

Q What other raters worked on the January, 1902, edition? A Mr. Philip Howard, Mr. Heber J. Fuller: others worked on it that were not known officially as raters.

Q What other persons worked on it as raters? A As raters, I have given—I have given the raters.

Q Didn't other persons do some of the ratings? A Yes, sir.

Q What other persons? A Mr. Elmer Wheaton.

Q Besides the persons you have just named? A Yes.
1070 Q Do you know Wright? A Yes, sir.

Q Did he do rating on that edition? A I don't know. Mr. Wright wasn't a rater.

Q My question is whether he did any rating work on that edition? A I don't know.

Q Do you know whether any other persons did any rating work on that edition? A No.

Q Did you do any night work? A Yes, sir.

Q When you were doing this rating? A Yes, sir.
Q How much of the time? A Well, it is hard to say, such as it required.
Q What? A That is hard to say.
Q Much or little? A Much, comparatively.
Q Well, about how many times a week? A At least three.
Q Sometimes more? A Yes, sometimes more.
Q And during what period of time? A I should judge that my night work was done between the 15th of November, 1901 and December 15, 1901.
Q What materials did you take home with you when you were doing this work, to use in the doing of it? A Well, most of the work done at night was checking over the work because it was very unhandy to do the rating at home.
Q Did you ever do any rating at home at night? A I think I have.
Q What materials did you take home with you to use 1071 in the doing of that work, that is, to fix the ratings?
A I can't say positively about that, I think probably just the material that I had at the office.
Q Well what was it, tell us what it was? A Well, I will say positively, rating blanks, the black bound book, the office book.
Q What do you mean by the office book? A The office tickler, and possibly the red bound book.
Q What is your recollection as to whether you took the red bound book home or not? A Well, I can't say positively; it wasn't absolutely necessary.
Q Do you say that you never took it home? A No, I wont.
Q To use in the fixing of the ratings? A No, I don't say that I never took it home.

Re-direct Examination by Mr. Pease.

Q What do you mean by rating blanks? A Rating blanks,—did I use that?
Q You did. A Revision blanks.
Q Did you always take the red bound book home with you if you took it at all? A Not always.
Q Did you use the red bound book in fixing ratings?
Mr. O'Connor: I object to the question because it is going

over ground the second time, and it is leading. A No.
1072 Q In cases where there was a variance in the information contained on the last revision report from your previous rating in which you referred to the red bound book did not that information in a larger number of cases differ from the rating shown in the red bound book?

Mr. O'Connor: I object to it as leading.

Q In cases where your information was incomplete and unsatisfactory and you referred to the red bound book, did you afterward send out for additional information before you completed the revision?

Mr. O'Connor: Objected to as leading and because the witness has already answered the question.

A Yes.

Q About what percentage of names did you make a change in the rating in this revision? A Changes of all kinds?

Q No, in ratings? In about what percentage of names was the rating changed? A Approximately, I estimated about thirty-five to forty per cent.

Q Why did you leave R. G. Dun & Company's employment and go to the Lumbermen's Credit?

Mr. O'Connor: Objected to as immaterial.

A I thought my advantages were better. I left voluntarily.

Q Was there any other reason?

1073 Mr. O'Connor: Objected to as immaterial and as leading.

A No.

Q The percentage of changes which you referred to,—don't you mean the—

Mr. O'Connor: Object to the question as leading.

Q —in names and spellings and classifications?

Mr. O'Connor: I object to the question as leading and suggestive.

A Well, I figured this way: I judged there were about thirty names on a page, and in numbers of cases I made ten changes in the page.

Q In the rating? A Yes.

Q Alone? A Yes.

Q Weren't there a number of pages in which you made fewer changes?

Mr. O'Connor: Object to the question as leading.

A I say that is simply an estimate; it is a very hard matter—.

Q Well, as a matter of fact, isn't the percentage of changes in the revision work you did as to the ratings, very much below thirty-five per cent?

Mr. O'Connor: I object to counsel's question as leading and as cross examination of his own witness. The witness has distinctly stated that the percentage of changes was, as nearly as he could estimate, from thirty-five to forty per cent.

1074 Mr. Pease: Might have been mistaken.

Q Answer the question. A Well, that is an estimate; it may be way out, that is an estimate.

Q It may be way under that, may it?

Mr. O'Connor: Object to the question for the reasons last stated.

A Maybe. May be way over that.

Mr. O'Connor: That is, thirty-five to forty per cent. may be above or it may be below? A May be way below.

Mr. O'Connor: That is all.

PHILIP C. HOWARD, called as witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Pease.

Q Please state your name? A Philip C. Howard.

Q What is your occupation, Mr. Howard? A Well, at present, what is known as reporter or rater for mercantile agency; do both inside and outside work.

Q By whom are you employed? A By the Lumbermen's Credit Association.

1075 Q How long have you been in their employ? A Since about the 10th of October, 1901.

Q Did you work on the revision of the 1902 edition of the reference book published by them? A I did.

Q By that association? A I did.

Q What were you furnished with to do the work? A This revision?

Q Yes, this revision work. A Well, I was furnished with the late revision blanks, with what is known as printer's copy.

Q How was that printer's copy made up. A Well, something in the nature of a pamphlet, a soft covered book and bound with a black binding, known as the black bound book, as I recall it.

Q What did it contain? A It was a fac simile copy of that particular state as appeared in the reference book published by the Lumbermen's Credit Association.

Q When? A Of the previous edition, July edition.

Q Of what year? A 1901.

Q Upon what were these sheets pasted? A Upon blank sheets lines leaving abundance of room on each side for notes.

Q What if anything did that contain aside from the printer's copy of the last edition of the previous reference book? A It contained the names that had been acquired in the ordinary course of the office work.

Q Since what time? A Since the previous July edition; that is, names developed by inquiry or new names ob-
1076 tained through the sources of trade papers and other sources of information.

Q From what were they taken? A Taken from what is known as the tickler, or office book.

Q Just how did you do this work, and what did you do? A Well, I took the blanks in alphabetical order.

Q What blanks? A These revision sheets.

Q Yes? A Compared this new information with the ratings as they appeared in the printer's copy and—

Q What else did you compare besides the rating? A The name or business classification.

Q Now then, as a result of this comparison what did you do? A Well, if there had been—if there had been any erasures or dealers out of business, of course I erased them.

Q If there had been erasures on what? A On the revision sheet by our correspondent.

Q All right. A And if the dealers that we had been accustomed to print, if any change was made in the rating, that was reasonable change I made proper note of it. If the change—

Q Note of it where? A On the printer's copy, proper change in rating.

Q All right; now what else did you do? A If the change was marked, or seemed to be out of all proportion or unreasonable, I at times either referred to what is known as the red bound book—

1077 Q What did that red bound book contain and how was it made up? A It was made up similar to what is known as printer's copy or the black bound book, with the exception that it had other ratings.

Q Anything else? A Well, it had some additional names.

Q Well now then, what did you do in such cases? A Well, I didn't always refer to the book in these cases; I as a rule laid the blank aside to have our office boy look up our manuscript reports and our old revision blanks.

Q Were they furnished you? A They were.

Q What did they contain? That is, what different kinds of blanks and sources of information? A I suppose that I used in this—referred to most commonly to what are known as the manuscript reports and the previous revision sheets. Manuscript reports contain information that we received from various sources.

Q Of what did the manuscript reports consist, what different kinds of blanks and sources of information? A Financial reports, statements from correspondents, financial statements from the dealer himself, bank references, trade references, what is known as tracer information or information obtained from subscribers by what is known in our office as a tracer report.

Q All right, go ahead, what others? A Report of our—traveler's reports. That I think in the main was the way the manuscript reports were generally made out.

1078 Q Do you recall any other? A I recall other sources of information but—

Q What are they? A We have trade papers and clipping bureaus, and various law bulletins or records of court items, and record items furnished by our correspondents in various places, that is, such as mortgages on real estate, chattels, suits, &c.

Q Do you recall any others? A Well, not in the direct use in manuscript reports, I think. There may be others, but this is all I recall at this time.

Q How about reports from Secretaries of lumber associations?

Mr. O'Connor: Objected to as leading.

A Well, that is embodied in our manuscript report, but is not an essential part of the report generally.

Q Well, I want to know what our manuscript reports contain, whether you regard them as essential or non-essential. A Well when that was in the nature of a report it was contained.

Q What other sources of information are contained in these manuscript reports, general information, besides those which you have named, if you can recall them? A That is about all I recall.

Q What about railroad lists?

Mr. O'Connor: Objected to as leading.

Q Do you have those? A We have those, those are
1079 used in compiling a list of names not directly in the manuscript reports.

Q How about country yard lists?

Mr. O'Connor: Objected to as leading.

A Those are used also in what is known as rating and entering the branches of what is known as lumber yard concerns in various towns in which they may be operating.

Q Now, coming back to the revision work proper. After having called for and received the manuscript reports, what did you do? A If there was such information in these reports to justify change in rating in accordance with the information as furnished by the correspondent, I made such change in the rating, if not—

Q And where did you make those changes? A On the printer's copy.

Q If not then what did you do? A I wrote both to the dealer in question for a financial statement, to the correspondent, to that particular correspondent if his report hadn't been in sufficient detail, if it had I wrote to another correspondent or to the bank in this particular town asking for information, other details, in regard to the dealer in question.

Q What if anything else did you do in those cases? A What was known as the red bound book was at hand to refer to when, in our judgment, we thought it advisable, merely as a check, or as a corroborative or negative of the infor-
1080 mation at hand.

Q What use did you personally make of this red bound book in the revision work which you did upon this edition of the reference book? A No use, except as a purpose of reference; as a comparison.

Q In what cases did you use it for that purpose? A Where there was a wide variance in the estimate with the report of the correspondent and the rating that we had what might have been known as present or the rating that we previously assigned to the firm or dealer in question.

Q Now having referred in those cases to the red bound book, what did you do then? A If the ratings in the red bound book affirmed this information of the correspondent, I made immediate use of the correspondent's rating, assigning such rating as indicated on the printer's copy.

Q What if any other use did you make of the red bound book? A Where it negatived this information I followed the course as mentioned previously; I wrote to the dealer for a financial statement and consulted other correspondence sources.

Q Are these the only uses which you made of the red bound book? A They are.

Q Did you in any instance, transfer or copy any name or rating from the red bound book to the printer's copy?

Mr. O'Connor: Objected to as leading.

A I did not.

Q Upon what were the changes which you made in
1081 the printer's copy of that portion of the revision work which you did, based? A Based on original information from the correspondent and the dealer himself.

Q About what percentage of changes in ratings was made in the revision work which you did? A That is rather hard to estimate definitely, but I should judge not more than five or ten per cent. at the outside.

Cross-Examination by Mr. O'Connor.

Q Are you now in the employ of the Lumbermen's Credit Association? A I am, sir.

Q In what capacity? A In what is known as a rater and preparation of a semi-weekly sheet, corrections and changes and new names that occur in the lumber line.

Q You entered the service of that company in October, 1901, I understand you to say? A Yes, sir.

Q Were you ever in its employ before that time? A No, sir.

Q The red bound book of January, 1902 edition, I understood you to say, was a duplicate copy of the July, 1901 edition, with certain ratings and certain additional names added, was it? A A duplicate of this printer's copy or black book, yes.

Q And that was a copy of the last preceding edition of the Lumbermen's Credit Association book was it not? A Yes.

1082 Q What were the ratings, the additional ratings in the red bound book? A Ratings of Bradstreet and R. G. Dun & Company.

Q How were they written in that book, in ink or lead pencil? A In lead pencil.

Q How were the additional names written? A In lead pencil too, I think.

Q Where were they taken from? A I don't know.

Q How do you know that the ratings were R. G. Dun & Company's and Bradstreet & Company's? A I was familiar with the keys of both of the companies.

Q How did you become familiar with their keys? A I had occasion to refer to both books and use them previously.

Q What? A I had occasion to refer to both of these books and to use both of them previously.

Q Where? A In other employment that I had been engaged in.

Q What other employment? A Well, previous to that time I was in the employ of the Mutual Mercantile Agency, and prior to that in a wholesale coffee house in New Orleans.

Q So you are familiar with Dun & Company's ratings? A Yes, sir.

Q Did you have any keys to use in connection with the red bound book? A Yes, I was handed keys.

Q What keys? A Keys of both Bradstreet and R. G. Dun.

1083 Q Who handed them to you? A Mr. Clancy.

Q When? A At the time in which I commenced the rating.

Q Did he explain to you what they were? A No. He asked me if I was familiar with the keys, as well as I recall, and I told him that I was.

Q Didn't he explain to you whose ratings they were? A I don't recall that he did; it was useless under the circumstances.

Q Why? A When I told him that I knew.

Q That you knew what? A Knew what keys they were.

Q What has become of those keys? A Well, I think they are at the office yet, I saw them not long ago in an old desk that I had used. I don't know whether they are there now or not, it has been some weeks or months ago.

Q When he handed you the keys did he explain to you for what purpose you were to use them? A Not at that particular time.

Q Did he afterwards? A Prior to that time he had given me general instructions in regard to their policy of rating and outline pursued.

Q How long before he handed you the keys? A I don't recall the exact time, it was on the same morning or the same day.

Q Did he hand you any part of the red bound book
1084 with the keys? A Well, not at the same time; I was either handed the red bound book before or afterwards, I don't recall which.

Q But all on the same day? A Yes, on the same day.

Q He explained to you that they were to be used in connection with the red bound book, did he?

Mr. Pease: I object to that question. Ask him what was said.

A I don't recall any particular explanation, it was implied

Q When you were fixing ratings, did you use the red bound book in connection with the ratings in fixing the ratings? A I don't understand your question just exactly.

Q When you were fixing the ratings did you refer to the red bound book in fixing them? A No, not in fixing the ratings.

Q Did you make no reference whatever to the red bound book in fixing any ratings whatever? A Not in fixing the rating, no.

Q Did you fix the ratings without having seen the red bound book? A Generally, yes.

Q Did you always, in every case— A Not in every case, no.

Q —fix the ratings before you looked at the red bound book? A No.

Q Then there were certain cases where you referred to the red bound book before you fixed the ratings. A There were.

1085 Q What were those cases? A Cases where there was a wide discrepancy or variance in the rating as it had appeared formerly and in the information that was sent in by the correspondent on the revision sheet.

Q In those cases you referred to the ratings in the red bound book, did you? A In some instances. Not all.

Q What particular instances did you do it? A Well, in instances where our manuscript reports or previous revision sheets offered no information in agreement with that of the correspondent under consideration.

Q In such cases you referred to the red bound book? A Yes.

Q Do you remember how many of those cases there were? A No, sir.

Q And what did you do in such cases? A Where the ratings as they appeared in the red bound book offered a corroboration or affirmed the information of the correspondent, I made immediate change in rating according to the correspondent's estimate as given.

Q Were there any cases where you found that in such cases the two ratings of R. G. Dun & Company and Bradstreet differed from each other? A You say, were there any such cases?

Q Yes. A Yes, I think there were some few cases, I don't know just how many, but as well as I remember, there were some.

1086 Q What did you do in such cases? A I gave no consideration to the red bound book. Instituted a direct investigation by correspondence with—

Q Did you always have time? A Yes, sir, I always had time.

Q Were there no cases in which you did not have complete and satisfactory information before your work was completed? A There were a few cases, not many. Work had been commenced several months before the edition of the refernce book which gave ample time in except a very few cases.

Q What did you do in those few cases where you didn't have complete and satisfactory information before the book of the Lumbermen's Credit Association was issued? A I held them over for further investigation and—

Q I am asking you what you did in cases where you were not able to obtain complete information before the book of the Lumbermen's Credit Association was issued? A Made no immediate use at all, holding them to make such change as might occur in the supplement that we issue from time to time.

Q But what did you do in fixing the ratings in such cases for the January, 1902, edition? A I fixed no rating unless I had information at hand.

Q Then, do I understand that in every case without exception where you did not have complete and satisfactory information regarding parties before the book of the Lumber-

1087 men's Credit Association, and you referred to R. G. Dun & Company's ratings and Bradstreet's ratings and you found that they had rated such persons, you didn't fix any rating in your book? A You are to understand that.

Q What? A I say you are to understand that.

Mr. Pease: That is the fact, isn't is?

A That is the fact.

Mr. O'Connor: We will let the Court decide the question of fact.

Q Where were the additional names that appeared in the red bound book obtained from? A I don't know.

Q Did you make an affidavit that was used in this case? A Yes, sir.

Q Look at the affidavit which I now show you, state whether this is your signature? A That is, sir.

Q Did you swear to that affidavit? A I did, sir.

Q In that affidavit you stated that the red bound books contained names and ratings in the last previous edition of the reference book published by said Association, that is, by the Lumbermen's Credit Association, together with additional names and ratings from reference books of other agencies. Did you make that statement in that affidavit?

Mr. Pease: I object, and advise the witness he needn't answer; the affidavit shows for itself.

Mr. O'Connor: Mark this affidavit for identification, the affidavit shown to the witness.

1088 Affidavit marked "For identification, Exhibit 1, December 1, 1902.

Q Did you ever do any rating work at home? A What particular times?

Q At any time? A No.

Q Never? A No.

Q Did you ever do any rating work outside of the office of the Lumbermen's Credit Association? A No, sir.

Q On the January, 1902, edition? A No.

Q What states did you revise? A Alabama, Arkansas, Louisiana; I did some work on Virginia and west Virginia.

Q That all? A That is all.

Q Did any ratings appear after the new names in the red bound book? A I don't know what you mean by new names.

Q You spoke of new names written in lead pencil. A I didn't call them new names, did I?

Q Well, I call them the new names, what would you call them, additional names? A Yes.

Q Very well, let us refer to them as additional names. What ratings, if any, appeared after those names in the red bound book? A The ratings of R. G. Dun & Company,

Bradstreet & Company and in some instances ratings of other agencies.

Q How often did the ratings of R. G. Dun & Company appear? A In the majority of instances.

1089 Q Didn't they appear in nearly every case except where R. G. Dun & Company rated the parties blank? A No, I can't say that; as I recall it there were some instances in which there was no rating of R. G. Dun & Company.

Q Where what? A There were some instances in which there were no ratings of R. G. Dun & Company.

Q In those cases what was given as R. G. Dun & Company's rating, blank, wasn't it? A No, not always.

Q What did you do with those names? A I didn't do anything with those.

Q Nothing whatever? A No.

Q Didn't you transfer any of them to the printer's copy? A No.

Q Did you compare them with any names on the Printer's copy? A In some instances.

Q What instances? A Instances to agree with those that I mentioned in previous statements.

Q Please tell me now what instances you mean, in what particular cases the names, additional names were transferred from the—that appeared in the red bound book, were compared with the names in the printer's copy? A Well, where these names also appeared on the revision sheet, and where there was—

Q By revision sheet you mean printer's copy, don't you? A No.

1090 Q The revision blank? A Yes, the revision blank as received from the correspondent.

Q That is, you compared only such names in the printer's copy with the additional names in the red bound book as appeared in revision blanks? A Yes.

Q When did you last see the red bound book of the January, 1902, edition? A I can't recall the date.

Q Are there any red bound books in your office now? A I can't state positively that there are any now. There were some not a great while ago.

Q How long ago? A I remember having seen some at a comparatively recent date.

Q What were they? What red bound books were they that you saw at a comparatively recent date? A Books gotten up in similar manner to those previously referred to.

Q When did you last see the January, 1902, red bound book? A I told you I couldn't recall that.

Q Did you ever see any of the red bound books prior to January, 1902, edition? A You mean of a prior edition?

Q Yes. A I have on one or two occasions.

Q What were they,—what editions were they? A I don't know.

Q Where did you see them? A There in the office, lying on a shelf in the office.

1091 Q Were any other books kept with them? A Yes.

Q Does the Lumbermen's Credit Association preserve its red bound books? A I don't know to what extent.

Q Have you never any occasion to refer to them at times? A I have had a few occasions.

Q For what purpose? A Merely purpose of comparison.

Q Comparison of what? A Of rating.

Q What ratings? A What ratings?

Q Yes, what ratings do you compare with what ratings? In order to make a comparison you must compare two things. Now you say you compared ratings; what ratings did you compare with what other ratings? A Well, I haven't made such comparison more than—

Q I am not asking you how often you made comparison, but what ratings did you compare? A Well, I am going to tell you; not more often than three or four occasions that the question came up as to how such and such a concern was rated in the red bound book, or by Bradstreet or R. G. Dun & Company, and a comparison was made, with no intention of using that rating, merely to determine what the comparison would show.

Q When did you make that comparison? A When did I make it?

Q Yes. A I don't recall the time.

Q In what red bound books did you find the ratings with which you made the comparison? A In what edition?

Q Yes. A This was a circumstance that I don't recall very clearly, and I can't answer what book that was.

1092 Q Have you ever had occasion to make a reference to the red bound books for any other purpose or on any other occasions? A No.

Q What did you find when you made the comparison on the occasions to which you refer? A I can't recall what the comparison showed.

Q You remember what you did after you made the com-

parison? A Well, I can recall that I gave no heed to them, to the rating as it appeared in the red bound book; that it didn't affect the course that I would have followed otherwise.

Q You don't remember how they compared? A No.

Re-direct Examination by Mr. Pease.

Q Did you do any night work upon this revision? A Yes, sir.

Q Where did you do it? A At the office of the Lumbermen's Credit Association.

Q How much night work did you do? A For some five or six weeks I worked almost every other night I think it was.

Q What if any use did you make of the information in the instance referred to by you, when you examined the red bound book? A What instance does that mean, any?

Q The last instance you referred to. A No use at all.

Q What reason had you for making that examination? A Well, no definite reason that I recall, except the question was raised as to what the rating may have been in 1093 either of the other books previously mentioned.

Q Was it anything more than a matter of curiosity? A No, I think not.

Q Well wasn't the red bound book which you examined, the January edition,—I mean the red bound book used in connection with that edition? A No, I don't know that it was or that it was not. As I previously mentioned, I don't recall the circumstance very clearly.

Q Was there anything on these keys they furnished you to indicate whose keys or what keys they were? A No.

Re-cross Examination by Mr. O'Connor.

Q What other raters were in the employ of the Lumbermen's Credit Association?

Mr. Pease: Objected to not re-cross.

A At what times?

Q Who worked on the January, 1902, edition? A Mr. Knefler, Mr. Fuller, Mr. McLain, and Wright.

Q What Wright? A F. W., I think.

Q Fred Wright? A I knew him as F. W. Mr. Clancy also did some work I think, as well as Mr. Stadden.

Q What is Wright doing now? A He is traveling reporter I think, for the Lumbermen's Credit Association.

Q He has returned to the service of that company since this suit was commenced, hasn't he?

Mr. Pease: Objected to as immaterial and not re-
1094 cross examination.

Q What is your answer?

Mr. Pease: If you know.

A Yes, I understand that he has.

Mr. Pease: Mr. Glass has entered the employment of the R. G. Dun & Company since this suit was commenced?

Q Were keys furnished to the other raters? A I don't know.

Q Did you ever see any of the other raters at work? A I saw them at their desks.

Q Did you ever see any keys on their desks? A No.

Q Did you ever see red bound books or sections of the red bound book on their desks? A I don't recall that I did, may have been there but I—

Q The red bound books which you used in connection with your work of fixing the ratings were the parts of the red bound book covering the states which you revised, were they not? A Each state was under a separate cover.

Q That is, when you were revising Alabama you used—the part of the red bound book which you used in connection with your work was the portion of it covering the state of Alabama? A Yes, identical with the printer's copy as I have mentioned.

Q Did I ask you if you ever counted the number of names in the states that you examined? A You started to ask me some such question.

Mr. O'Connor: Yes, I was possibly interrupted by Mr. Pease.

1095 Read the question.

(Question read.)

A Shall I answer that question?

Q Yes; have you ever counted the number of names in the states, any of the states that you examined? A No.

Q Have you ever counted the number of changes that were made in any of the states that you examined? A No.

Q So that the percentage of changes which you have estimated is not based upon any actual calculation? A It is only an estimate.

Re-direct Examination by Mr. Pease.

Q Mr. Howard, you said the red bound book was identical with the black bound book? A In form.

Q Well now, just exactly how far were they identical? A As comparing one particular—one state.

Q And as to the matter contained in each to what extent were they identical? A To the extent that each had pasted in them a fac simile copy of the previous edition of the reference book of the Lumbermen's Credit Association.

Q And no further? A No.

The taking of further testimony is adjourned subject to notice.

1096 December 19, 1902.
10 o'clock A. M.

Met pursuant to notice.
Present, as before.

JOHN F. GALLAGHER called as a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Pease.

Q Please state your name? A John F. Gallagher.

Q Where do you live, Mr. Gallagher? A 355 Winthrop Avenue, Chica

Q What is your business? A Chief Clerk for R. G. Dun & Company, Chicago office.

Q How long have you held that position? A About seven years.

Q What are your duties? A Supervising the detail work of the office.

Q I will ask you to look at papers marked Complainant's Exhibit 34 of November 4, 1902, and Defendants' Exhibit A, of November 4, 1902, and state what, if anything you had to do with preparing those papers or either of them? A I had nothing to do with preparing them.

Mr. O'Connor: Did you say preparing them?

A Yes. No, I had nothing to do with that.

1097 Q Did you ever see either of them before? A I saw both of these papers before, at least, I think they are the same, they were in the hands of our Mr. Stein.

f John
ner.

Q When did you first see them? A Sometime during the summer of 1902, I am not clear as to dates, I didn't charge my memory with any—

Q Where? A In our office.

Q In connection with what matter, if any? A In connection with comparison of the rating of the Lumbermen's Agency with our own.

Mr. O'Connor: With what book?

A The Lumbermen's Agency, I don't know the name of the concern.

Q Lumbermen's Credit Association reference book? A Yes, if that is the correct name.

Q In whose possession were they? A Mr. Stein's. I only saw one of these, I didn't see the other; I know the similarity in writing.

Q What is Stein's name? A T. E., I think.

Q What is his position? A He is a typewriter operator.

Q For whom? A R. G. Dun & Company.

Q What are his duties? A Condencing reports and writing reports in answer to subscribers' tickets.

Q Does he add ratings to reports? A Yes.

1098 Q Is he familiar with the system of rating in use in your office? A He is.

Q Did Mr. Stein confer with you in reference to the making up of this schedule? A Mr. Stein received part of his instructions from me, to compare the books.

Q And— A Just as to how he was to do it, I left that to himself.

Q And from whom else? A From Mr. O'Connor. I sent him to Mr. O'Connor for full instructions.

Q Did he have instructions,—receive instructions from any other person connected with R. G. Dun & Company aside from yourself? A Not that I know of.

Q Did Mr. Stein not confer with you with reference to the arrangement of this schedule? A No.

Q You had nothing whatever to do with it? A Nothing whatever.

Q What instructions did you give Mr. Stein? A Simply that he was to make a comparison to ascertain the similar ratings.

Q How was he to determine the similar ratings, so called? A Well, I didn't give him any instructions as to that at

all, he got them from Mr. O'Connor. I sent him up to Mr. O'Connor to get the full details of what he was to do. Depo F.

Q Did you talk with any one else regarding this com-
1099 parison? A I had had a previous interview with Mr. O'Connor about the matter.

Q With any one else? A Not that I remember.

Q Did you ever talk with Mr. Griswold? A He didn't give me any instructions.

Q Did you ever talk with him about it? A About the case?

Q Yes. A Yes.

Q And about this comparison? A No.

Q Did you ever talk with Mr. Douglas about the case? A When you say "talk about the case," let me ask you a question. Do you mean as to getting any instructions from them, or just commenting on the case in general?

Q Commenting on the case in general. A Yes, I have spoken to Mr. Douglas about the case.

Q Did you talk with any one else about it? A No.

Q Do you know Mr. Fish? A No.

Q Foster Lumber Mercantile Agency? A No.

Q Or Mr. Glass? A No.

Q Never talked with either of them? A No.

Q Mr. Abbott? A No, sir.

Q Attorney? When did you first hear about the case? A It was in the spring of last year; spring of 1902, that is my best recollection.

Q Wasn't it earlier than the spring? A No, I think
1100 the matter was first brought to my attention some time in the spring.

Q When was it with reference— A It might have been —Well, I can't say.

Q When was it with reference to the time that the bill was filed? A Well, it was probably two or three weeks before that, that I heard it mentioned.

Q That was the first you heard of it? A First I heard of it.

Q Who then called your attention to it? A Mr. Griswold.

Q Did Mr. Stein confer with any other person with reference to the making of this schedule? A Not that I know of.

Q To your knowledge? A Not that I know of. This key you mean?

John
er.

Q Yes, or schedule, as we call it? A No.

Mr. O'Connor: Key is the better word, isn't it?

Mr. Atwood: It is a schedule of both keys.

Mr. O'Connor: When you refer to "this schedule" you better identify it.

Mr. Pease: They are both the same.

Mr. O'Connor: The schedules to which you have referred—

Mr. Pease: Well, referred to Exhibit 34, and Defendants' Exhibit A.

Q What talk did you have with Mr. Griswold about this case; what did he say to you?

1101 Mr. O'Connor: I object to it as immaterial and incompetent.

A Mr. Griswold told me that it was discovered that the Lumbermen's Credit Association had been taking its rating from our records.

Q Did he tell you who discovered it?

Mr. O'Connor: Same objection.

A He did not.

Q Or how it was discovered?

Mr. O'Connor: Same objection.

A He did not.

Q Did he tell you who called it to his attention? A No, he did not.

Q In that conversation did he refer to any other person or concern?

Mr. O'Connor: Same objection.

A I think he mentioned the name of Mr. Glass.

Q Do you know his full name?

Mr. O'Connor: Same objection.

A No.

Q What did he say about Mr. Glass?

Mr. O'Connor: Same objection.

A He said that Mr. Glass had brought the matter to his attention. How he discovered it, I don't know.

Q Did he say when Mr. Glass had done that?

1102 Mr. O'Connor: Same objection.

A It was about the time that I first learned of the case, because that was my first conversation about the case, was with Mr. Griswold.

Q Did he mention any other person?

Mr. O'Connor: Same objection.

A No.

Q Did he mention the Foster Lumber Mercantile Agency? Depos F.
Mr. O'Connor: Same objection.
A That I don't remember.
Q Didn't he say that Mr. Glass was connected with that agency?
Mr. O'Connor: Same objection.
A That I couldn't say.
Q You wouldn't say that he did not?
Mr. O'Connor: Same objection.
A I wouldn't say it, no. I wouldn't say that he did not or whether he did; I am uncertain, I don't remember.
Q What did Mr. Stein say to you about this schedule, Exhibit 34? A I first saw the schedule in Mr. Stein's hand, and he, in explaining to me, said he had drawn it off as it would be more convenient for him to make the comparisons with that before him at all times. He had it sitting up in front of him when he was doing the work.
Q Did he explain to you in what manner it was being used?
1103 Mr. O'Connor: Objected to as leading.
A No, he did not, I could see for myself it was a copy. I could see it was used in the matter of comparison.
Q Was the work done in your office? A Yes, sir.
Q Was it under your direction? A Yes, sir.
Q Did you supervise it? A I did nothing but give instructions to see that he had a comfortable place to sit where he could pursue the work, I left it entirely with him.
Q What did you consider as similar ratings?
Mr. O'Connor: Objected to, as calling for a conclusion of the witness, and as incompetent.
Q I mean in making this comparison? A I didn't examine their book to know; don't know now how they rate their concerns, whether their ratings are similar or not. I mean whether they are between the same amounts or not. I didn't do any of the examination in the matter of the work at all.
Q And do I understand you to say that you made no suggestions to Mr. Stein as to the manner in which the work should be done?
Mr. O'Connor: I object because the witness has already stated what instructions he gave to Mr. Stein.
A I don't remember having done anything that would border on that except directing him to Mr. O'Connor for full details.

f John
er.

Q You are familiar with R. G. Dun & Company's key, of course? A Yes.

1104 Q Has that key been changed recently? A Only in one respect.

Q When was that change made? A In, I think, for the July issue, 1902.

Q What was the change?

Mr. O'Connor: I object to it as immaterial.

A Merely a change in the highest credit rating standing alone, which was blank one and a half, was changed to blank one. That is, when we say blank one, one standing alone with no character preceding it.

Q Was that the only change? A Only one that I know anything about.

Q When was there a change in the key before this one you mention? A It was before my taking charge as Chief Clerk. to the best of my recollection, seven or eight years ago, there was one then that I didn't take any interest in.

Q How long has the D and the D plus, been in use? A That is the change that I refer to having occurred so long ago, I remember the letter D occurring in it.

Q What is the credit rating used by R. G. Dun & Company? A You will have to be a little more explicit in that question, I don't quite catch what kind of an answer you want.

Q In what manner are your credit ratings expressed in the key, by what characters?

Mr. O'Connor: I object, because the books offered in evidence will speak for themselves.

1105 A By numerals.

Q What do those numerals indicate?

Mr. O'Connor: Objected to because the key which has been offered in evidence will explain itself.

A Grades of credit.

Q These different grades of credit are based on the capital ratings are they not, on the amount the party is supposed to be worth?

Mr. O'Connor: Objected to because the key which has been offered in evidence will speak for itself.

A They have a relation to capital in their assignment.

Q What is that relation?

Mr. O'Connor: Same objection, and because it is immaterial.

A It has a proportionate relation.

Q What is the proportion?

Mr. O'Connor: Same objection.

A Well, we call a man entitled to good credit who has the letter "G" before his name. We might call a man entitled to high credit who has the letter "F" before his name. "G" might also apply. I mean, "3" might also apply. "3 1/2" might apply. "4" might apply, and yet he may have no credit letter behind the capital, that is signifying grades of credit.

Q Upon what are the capital ratings of R. G. Dun & Company based?

Mr. O'Connor: Objected to because the witness has
1106 already answered the question and because the key which has been offered in evidence will speak for itself.

Q Or rather, what do they indicate? A The merchant's net worth.

Q Now, upon what net worth as to amount or amounts would a rating of "F" be given? A Ten to twenty thousand dollars.

Q Supposing a man was reported as having a net worth of $12,000, what rating would be assigned? A "F".

Q Supposing he was reported worth $17,000? A "F".

Q Then any amount between, or including these two amounts will be rated in the same way, or assigned the same rating, would they not? A "F", yes, sir.

Q And is that true of each of the other ratings as indicated by the different letters used in the key? A Yes.

Q I mean capital ratings?

Mr. O'Connor: When you ask if that is true, you mean, I suppose, all amounts between the two amounts in any given case would be rated under the letter attached to those figures?

Mr. Pease: Indicating those two amounts, yes.

Q I mean, that is the system upon which the captial ratings are based? A That is the system upon which the capital ratings are based.

Q Now, where two different agencies were reporting
1107 upon the same concern or person, if the information received by each was correct, the amount of capital rating indicated by the different keys used by each agency would necessarily be similar would they not?

Mr. O'Connor: I object to the question as calling for a mere conclusion of the witness.

of John
her.

A I don't know anything about the system of other agencies.

Mr. Pease: Read that question.

Question read.

Mr. O'Connor: I repeat the objection, because it calls for a conclusion of the witness, and the witness is not shown to know anything about other agencies, and because the witness has already answered the question.

Q Supposing a man or party is reported to each of two agencies at a net worth of $8000, and each of the agencies used a letter in their key indicating the capital worth of from five to ten thousand dollars, the ratings given that party by each agency would necessarily be similar, would they not?

Mr. O'Connor: I object.

A No.

Q Capital rating would necessarily be similar?

Mr. O'Connor: I object to it because it calls for a conclusion of the witness; because it asks the witness what other agencies would do in a given case and the witness is not shown to know what other agencies would do in such a case and because it is immaterial to this case what other 1108 agencies would do in a given case.

Mr. Pease: That doesn't follow at all, if each of them had a letter indicating the same amount and information received by each agency indicated a net worth between those amounts, it isn't a matter of conclusion at all as to what the rating would be.

Mr. O'Connor: It is clearly so.

Q You understand the question? A Yes.

Q And you may answer it subject to Mr. O'Connor's long objection, which doesn't count, according to senior counsel. A It would be the only practical action that an agency could take.

Q Then any amount of net worth reported, or information received showing a net worth within the range of the two amounts named would naturally have to be reported in the same way, would they not?

Mr. O'Connor: I object to it for the reasons last stated. What do you mean when you ask, will have to be reported in the same way?

Mr. Pease: Rated: I used the wrong word. Have to be rated.

Mr. O'Connor: Same objections.

Q That is, I have called your attention to a particular amount, $8000; now what would be true of the $8000 would also be true of any amount of net worth reported between
1109 the range of five to ten thousand, or whatever the range of the capital rating indicated by the letter might be?

Mr. O'Connor: Same objections.

A It is a natural supposition that it should be so.

Q That would also be true, would it not, in cases where the net worth of any given party reported was different as to any amount within that range?

Mr. O'Connor: Same objections.

Q For example, supposing your agency should receive a report from one correspondent stating that a man, a given party's net worth was $6000; supposing another agency should receive a report from another correspondent that he was worth $8000, the rating given by each agency would necessarily be the same, would it not?

Mr. O'Connor: Objected to for the same reasons.

A If the same method was followed in both cases it would. same method of rating.

Q Do you mean the same range included? A Yes, if the same method of rating was used it would be the same.

Q And the same range in the key? A Yes.

Q I am still referring to the five to ten thousand dollar rating. A Yes.

Q That would also be true, would it not, as to any amounts included within the range?

Mr. O'Connor: Same objections.

1110 Q Of the rating? A If the same method was followed, it would.

Q How much experience have you had in this agency business? A Seventeen years.

Q With whom were you connected prior? A With the Bradstreet company for ten years.

Q And you are thoroughly familiar with the rating—with the agency business and ratings of business concerns. are you not? A Yes, from our standpoint.

Q What do you mean by that? A The standpoint?

Q Yes, "our standpoint"? A I mean from our method of doing the business.

Q And also from Bradstreet's? A From what I know of Bradstreet Company's business, when I was in their employ.

n of John
gher.

Q You have charge of the raters in Dun's office? A All of it, yes, sir.

Q Dun's Chicago office? A Yes.

Q What district is included in the Chicago office? A There is fifty-four counties, to the best of my recollection in Illinois, the whole state of Iowa, and I don't remember how many counties in Indiana.

Q Are all the ratings in this territory made in the Chicago office? A Yes; the ratings are made by the Iowa offices, but they are edited in this office; they are placed on file and accepted or rejected or changed, as circumstances indicate or the rater dictates.

1111 Q And these ratings are made directly under your supervision? A Yes, sir. I would like to make one exception. All of the state of Iowa is under my supervision with the exception of the district attached to Sioux City, which makes its own ratings.

Q Do you know who else worked on this comparison that was made of the— A Yes.

Q —similar rating work? A Yes.

Q Who were they? A You don't want Mr. Stein's name I suppose?

Q Well,— A T. E. Stein, Mr. Kramer, Jerry Hubal, F. J. Gallagher.

Q Is that all? A That is all I know of.

Q If there were any more you would have known it, wouldn't you? A You are speaking of the book now?

Q I mean of this similar rating work that was done? A Involving the use of these keys? A Yes.

Q In doing this work on the similar ratings was there any attention paid to the classification of business?

Mr. O'Connor: I object to it because the witness has stated that he did none of the work himself, and as I understand, doesn't know what was actually done.

Mr. Pease: If he don't know he will be sure to tell us.

Mr. O'Connor: I understood him to say so.

Mr. Pease: Don't think he did. Said it was done under his supervision.

1112 A I know that in a general way the classifications were mentioned in relation to what was to be taken from our book.

Q What do you mean, taken from your book? A I mean examined with our book.

Q What do you mean by "mentioned"? A I mean that it was stated that the Lumbermen's book—

Q Stated by whom? A By Mr. O'Connor, that the Lumbermen's Agency or Credit Association, as you please, to have the name correct, reported a certain line of business and it was that line that we would find in our book.

Q Now then in these ratings, reports by these young men who made this comparison as to similar ratings, were there any ratings taken into account where the classifications of business were different? A That I don't know.

Q What were your instructions in that respect? A All instructions were received from Mr. O'Connor. All I mentioned to them was the comparison of similar ratings. I left the details to Mr. O'Connor.

Q What instructions did Mr. O'Connor give these people? A I wasn't present.

Q Did they report them to you? A No.

Q From whom did these other parties who worked on this comparison as to similar ratings, aside from Mr. Stein, receive their instructions? A From Mr. Stein as to method.

Q Any one else? No, not to my knowledge.

1113 Q Did none of these parties during this work confer with you regarding it or call your attention to any part of it? A Not that I remember.

Q In no instance? A Not that I remember.

Q Did you ever see Mr. Fish or Mr. Glass? A I don't know either one of them.

Q In your office? A I don't know either one of them.

Cross Examination by Mr. O'Connor.

Q Did Mr. Stein have anything to do with the fixing of ratings? A As they appeared in our reference book?

Q Yes. A No.

Q That is, he wasn't a rater? A No.

Q And didn't do any of a rater's work? A No.

Q What did you mean when you said that he added ratings to reports? A It is necessary, when we send out a report to a subscriber, to copy on the copy the rating that appears on the binder leaf.

Q Then the ratings which he added to the reports he simply copied from other books? A Copied.

Q Is Mr. Griswold now living? A No.

Q When did he die? A In August, 1902.

n of John agher.

Mr. O'Connor: I now object to all the testimony of the witness relating to conversations with Mr. Griswold, as incompetent, it appearing that Mr. Griswold is dead.

1114 Q I understood you to say that a change was made in R. G. Dun & Company's key of rating, some time in 1902, and that the last prior change was made seven or eight years ago. A That is the best of my recollection, it is a long time in the past.

Q You remember exactly when the last preceding change was made? A No. But I know in what letter, "D", I mentioned that in the testimony.

Q You don't remember the date, except that it occurred seven or eight years ago? A No, that is the best of my recollection; I am only guessing at that.

Mr. O'Connor: That is all.

Mr. Pease: That is all.

n of T. ce.

STANLEY T. PRUDENCE, called as a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Pease.

Q Please state your name? A Stanley T. Prudence.

Q Where do you live? A 1911 Washington Boulevard.

Q What is your business? A In charge of the city reporting of R. G. Dun & Company.

1115 Q How long have you held that position? A About ten years.

Q What was your occupation prior to that? A Well, I have been with Dun for twenty-seven years.

Q What other positions have you held during that time? A Well, I have been reporting most of my life; was seven years Chief Clerk.

Q Where, what office? A In this office.

Q Are you familiar with the key and ratings of R. G. Dun & Company? A Yes, sir.

Q When did you first learn of this case? A I think it was a little less than a year ago.

Q From whom? A From Mr. Griswold, now dead, I believe.

Q Whom else did you talk with about it subsequently? A Very briefly with Mr. Douglas, not canvassing the case, however, with him, but I was directed to go to our lawyer's

office on an errand. Mr. Douglas came to me, I believe, and said, "you are going and I will take care of your work", or something like that. Deposit Stanl Prud

Q Whose office was that? A In R. G. Dun & Company's office.

Q No, but whose,—what lawyer's office? A Hoyne, O'Connor & Hoyne.

Q Whom did you see there? A Mr. O'Connor.

Q Any one else? A Yes.

Q Who else? A I don't know, I don't remember his name.

Q Some one connected with Mr. O'Connor's office?
1116 A I have been trying to think, but I don't know that positively.

Q Do you know a man by the name of Glass? A No.

Q Do you know a man by the name of Fish? A No. Well, I know some, but not in this connection,—around town, but not in this connection.

Q Do you know a man by the name of Edwin F. Abbott? A No.

Q You say you do know certain men by that name or some of the names? A Well, I know Glass, the furrier, and I know Fish on South Water street, and some others.

Q But it was neither one of those men? A No.

Q Did you learn, during the conversation in Mr. O'Connor's office where this other man was from, that is, from what office or concern he was connected with?

Mr. O'Connor: Objected to as mere hearsay and as immaterial.

Q Do I have to answer it?

Q Is there any reason why you shouldn't answer?

Mr. O'Connor: I simply make the objection.

Mr. Pease: You answer subject to the objection, then the Court will say whether it is proper or not.

A I believe I did.

Q What did you learn in that connection?

Mr. O'Connor: Objected to as immaterial and incompetent.

1117 A The gentleman I referred to said he was connected with another agency, and I guess he said the Foster.

Q Foster Lumber Mercantile Agency? A Yes.

Q Describe his appearance.

Mr. O'Connor: Objected to as immaterial and incompetent.

A Well, he was a gentleman of good size, pleasant address. I can't say that I tried to impress myself with his appearance or his name.

Q Didn't Mr. O'Connor introduce you to this party? A I believe he did.

Q Do you remember what Mr. O'Connor said when he introduced you to this party?

Mr. O'Connor: Objected to as immaterial.

A I think he simply introduced me and the other gentleman did the talking.

Q Did he mention his name? A He must have. I can't say that he did so, but—

Q But you don't now recall it? A I suppose he did. I do not.

Q Do you remember whether the name mentioned was Mr. Glass?

Mr. O'Connor: Same objection.

A I do not.

Q Or Mr. Fish? A No, I do not.

Q How did he wear his face, did he have a beard or—

Mr. O'Connor: Same objection.

A I would say no beard, I can't say as to moustache or not.

1118 Q About how old was he?

Mr. O'Connor: Same objection.

Q About how old did he appear to you? A I would say perhaps thirty-five. It is not very clear, though.

Q Was he heavy, thick set, or medium build?

Mr. O'Connor: Same objection.

A I would say he was a man of about five feet nine or ten, and fairly built in proportion; not a man giving the impression as being extra stout or the reverse.

Q Was he a good talker?

Mr. O'Connor: Same objection, immaterial and incompetent.

A I didn't notice that he was out of the ordinary.

Q Do you remember his complexion and hair, was it light or dark?

Mr. O'Connor: Same objection.

A I don't think he could be spoken of as light hair, I can't remember that well.

Q Was he a little bald in front?
Mr. O'Connor: Same objection.
A Don't think so.
Q Did you ever see him since? A No.
Q What did he say during the conversation?
Mr. O'Connor: Objected to as immaterial and incompetent.
A There was no preliminary talk that I know of.
1119 Q Well, did he say anything during the—
Mr. O'Connor: Same objection.
A He said, we are going into the other room.
Q Did you go into the other room?
Mr. O'Connor: Same objection.
A Yes.
Q With whom?
Mr. O'Connor: Same objection.
A He and I, I think some one else in the room; I think some one else in the room but they withdrew and said, "take this desk," or something like that, "I can get along without it."
Q What did he say to you?
Mr. O'Connor: Same objection.
Q After you arrived in the other room? A He asked me to compare with him as between our reference book and another book, certain ratings.
Q What was the other book?
Mr. O'Connor: Same objection.
A It was exhibited to me as one of the Lumbermen's Mercantile Agency books.
Q Lumbermen's Credit Association book? A That is my recollection, yes.
Q Was it a red book, red bound book,—red cover?
Mr. O'Connor: Same objection.
A I can't say, but I took pains to ask him to let me see what it was I was comparing with and—
1120 Q Was it a book similar in general appearance to Complainant's Exhibit of October 31, 1902?
Mr. O'Connor: Same objection.
A I can't remember the color, but I think a book about that size.
Q What did you compare at that time?
Mr. O'Connor: Same objection.
(Witness withdrawn for the present to allow Mr. Abbot to testify as he is in a hurry to go.)

EDWIN F. ABBOTT called as a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Pease.

Q Please state your name? A Edwin F. Abbott.
Q Where do you reside? A In Chicago; want my street number?
Q What is your profession? A Practicing law.
Q Do you know Mr. Glass, of the Foster Lumber Mercantile Agency?
Mr. O'Connor: Objected to as incompetent and immaterial.
A I know Mr. Glass who used to be with the Foster Lumber Mercantile Agency.
1121 Q Do you know Mr. Fish connected with that agency?
Mr. O'Connor: Objected to as immaterial and incompetent.
A Yes.
Q How long have you known these—
Mr. O'Connor: Same objection.
A O, about three or four years.
Q Do you know Mr. E. E. Moberly?
Mr. O'Connor: Same objection.
A Yes.
Q Is he connected with the Foster Lumber Mercantile Agency?
Mr. O'Connor: Same objection.
Q I understand that he is, yes I know him, and I understand he is connected with the agency.
Q You are his attorney, aren't you?
Mr. O'Connor: Same objection.
A Yes, I am his attorney.
Q And you were employed to organize that agency, the corporation, weren't you?
Mr. O'Connor: Same objections, immaterial and incompetent.
A Yes, sir.
Q You are one of the solicitors who filed the bill in this case?
Mr. O'Connor: Objected to as immaterial, incompetent, and the record will speak for itself.
A Yes.

1122 Q When did you first hear anything connected with this case?

Mr. O'Connor: Same objection, because it is immaterial and incompetent.

A In the latter part of December—well, I wont say the latter part of December, but I am pretty certain it was in December of 1901.

Q From whom?

Mr. O'Connor: Objected to because it is immaterial, and incompetent and the question calls upon the witness to disclose privileged communications.

Mr. Pease: I am not asking him to disclose any communication.

Q From whom? A I think Mr. O'Connor gave me the first information in regard to this case.

Q Was Mr. O'Connor the first person that you ever talked with in connection with this case, or any of the facts and circumstances referred to or stated in the bill of complaint?

Mr. O'Connor: Same objection.

A I think he is.

Q Did you ever talk with Mr. Glass about it?

Mr. O'Connor: Same objection.

A About the case?

Q Yes.

Mr. O'Connor: Same objection.

A Yes, sir.

Q Or Mr. Fish?

1123 Mr. O'Connor: Same objections.

A Yes, sir.

Q Or Mr. Moberly?

Mr. O'Connor: Same objections.

A Yes, sir.

Q You remember when you first talked with these parties?

Mr. O'Connor: Same objections.

A It was in December, 1901.

Q Did you ever have any conversation with any other persons connected with the Foster Lumber Mercantile Agency, or in their employ?

Mr. O'Connor: Same objections.

A Yes, sir.

Q Whom?

Mr. O'Connor: Same objections.

A With Mr. Wright and Mr. Gilbert, Mr. Biederman;

talked with other employes of the Agency, talk with them frequently.

Q Did you ever talk with any one connected with R. G. Dun & Company's office, aside from Mr. O'Connor?

Mr. O'Connor: Same objections.

A Yes, sir.

Q Who?

Mr. O'Connor: Same objections.

A Mr. Griswold.

Q Any one else?

Mr. O'Connor: Same objections.

1124 A I think I have met others.

Q Who?

Mr. O'Connor: Same objections.

A I don't remember now their names.

Q When did you talk with Mr. Griswold with reference to the time the bill was filed?

Mr. O'Connor: Same objections.

A In December, 1901.

Q Where did you talk with him?

Mr. O'Connor: Same objections.

A In Mr. O'Connor's office.

Q Have you withdrawn from the case, Mr. Abbott?

Mr. O'Connor: Same objections.

A Well, I don't know.

Q You haven't on the record?

Mr. O'Connor: Same objections.

A Well, I don't know whether I have from the record or not.

Q Have you outside of the record?

Mr. O'Connor: Same objections, and the additional reason that the record will speak for itself.

Q Have you aside from the record, as a matter of fact?

Mr. O'Connor: Objected to because it is immaterial and incompetent.

A As a matter of fact, I should say not.

Q Have you received any pay for your services in this case?

1125 Mr. O'Connor: Objected to, as immaterial, incompetent, and because it calls for the witness to disclose confidential relations between him and his client.

A I decline to answer that.

Q By whom were you paid for your services in this case?

Mr. O'Connor: Same objections.

A I decline to answer that for two reasons: I haven't said I was or was not paid, it assumes that I was paid, and—

Q Isn't it a fact—

Mr. O'Connor: Let the witness finish his answer.

Q Have you finished your answer? A I think I finished my answer.

Q —that you were paid for your services in this case by the Foster Lumber Mercantile Agency?

Mr. O'Connor: Same objections.

A Well, I will decline to answer that question.

Q Isn't it a fact that R. G. Dun & Company paid you nothing for your services in this case?

Mr. O'Connor: Same objections.

A I will decline to answer that question.

Q Didn't you receive $400 from the Foster Lumber Mercantile Agency in two checks for your services, on account of your services in this case?

Mr. O'Connor: Same objections.

A No, sir.

Q Isn't it a fact that you received two checks from 1126 the Foster Lumber Mercantile Agency for your services in this case?

Mr. O'Connor: Same objections.

A Possibly it is.

Q Well, is it or is it not?

Mr. O'Connor: Same objections.

A Why, my best recollection is I have received two checks, and other checks, more than two.

Q Well, I am asking you now, for or on account of your services in this case? A No, sir.

Mr. O'Connor: When you answered the last question did you refer to services in this case? You said that you had received two checks.

A No, he asked me if I had received two checks. Read the question, please.

Mr. O'Connor: Then you didn't mean that you had received checks for services in this case?

The Witness: Read the question.

Questions and answers read as follows: "Isn't it a face that you received two checks from the Foster Lumber Mercantile Agency for your services in this case? A Possibly it is. Q Well, is it or is it not? A Why, my best recollection is I have received two checks and other checks, more than two."

A I want to correct that answer, "for services in this case," I didn't know that was added to that question.

1127 Q Did you receive any pay from Mr. Moberly for services in this case?

Mr. O'Connor: Objected to for the same reasons.

A No, sir.

Q You are not the regular attorney for the Foster Lumber Mercantile Agency, are you?

Mr. O'Connor: Same objections.

A I think I am, yes.

Q Did you not receive a check from the Foster Lumber Mercantile Agency, $200, dated February 17, 1902?

Mr. O'Connor: Same objections.

A I don't remember.

Q Well, about that date?

Mr. O'Connor: Same objections.

Q Did you receive a check for the same amount dated July 26, 1902, for services in this case?

Mr. O'Connor: Same objections.

A I don't remember.

Q Will your books show?

Mr. O'Connor: Same objections.

A No, sir.

Q Didn't you keep any books? A No, sir.

Q Bank account will show, wont it?

Mr. O'Connor: Same objections.

A It might or it might not. That is, I might have drawn the currency on it, and might have deposited it. If I

1128 deposited it would show, if I didn't it wouldn't.

Q Do you still decline to state whether R. G. Dun & Company paid you anything in this case?

Mr. O'Connor: Same objections.

A Yes, sir, I decline to answer.

Q Have you an account or any memorandum against R. G. Dun & Company in your books for services in this case?

Mr. O'Connor: Objected to as immaterial, incompetent, because it calls upon the witness to disclose private relations between him and his client.

Mr. Pease: That isn't private.

A I haven't any books in which I keep accounts with clients.

Q Keep any memorandum of services?

Mr. O'Connor: Same objections.
A Yes, I do.
Q Have you any memorandum— A Yes.
Q —of charges against R. G. Dun & Company for services in this case?
Mr. O'Connor: Same objections.
A Not for charges, no. I have for the time.
Q Is it against them or under their name?
Mr. O'Connor: Same objections.
A Isn't against anybody.
Q Just memoranda of the time spent in this case? A Yes.
Q And you have received pay from the Foster Lum-
1129 ber Mercantile Agency on account of the time spent in this case?
Mr. O'Connor: I object because the witness—
A No, sir.
Q Do you swear you never have,—that you have received no pay or compensation from the Foster Lumber Mercantile Agency on account of services in this case?
Mr. O'Connor: Same objections.
A Yes, sir.
Q Have you received pay from any one else on account of services in this case?
Mr. O'Connor: Same objections.
A I decline to answer the question.
Q Have you received any pay or compensation from Mr. Fish or Mr. Glass or Mr. Moberly or any one else connected with the Foster Lumber Mercantile Agency, for or on account of your services in this case?
Mr. O'Connor: Same objections.
A I decline to answer the question.
Q When did you go to Mr. O'Connor's office first in connection with this matter?
Mr. O'Connor: Same objections.
A In December, 1901.
Q What part of December?
Mr. O'Connor: Same objections.
A I don't remember.
1130 Q How did you come to go there?
Mr. O'Connor: Same objections.
A Mr. Fish or Mr. Glass told me that Dun & Company had caught Clancy, as they call it, swiping his reports, or their reports, and that Mr. O'Connor would like to see me.

Q Well, which one was it, Glass or Fish? A I don't remember.

Q Or were they together? A I don't remember about that.

Q Where were you told this?

Mr. O'Connor: Same objections.

A I think it was in their office.

Q In their office? A Yes.

Q That is, the Foster Lumber Mercantile Agency's office? A Yes.

Q How long was that before you went to see Mr. O'Connor?

Mr. O'Connor: Same objections.

A Why, possibly the same day, possibly the next day, very soon, shortly before I saw Mr. O'Connor.

Q Was that the first that you heard or learned of the subject matter of this suit from any source?

Mr. O'Connor: Same objections.

A It was the first time I ever heard from any source anything in regard to the matter in controversy in this suit.

Q And how did you come to go over to the office of the Foster Lumber Mercantile Agency at that time?

Mr. O'Connor: Same objections.

1131 A I was over there frequently.

Q But how did you happen to be there this time?

Mr. O'Connor: Same objections.

A I don't remember. Now I wish to state generally, that my best recollection is that I never heard of this case until the month of December, 1901, it might have been a little before the first of December, but that is my best recollection. It was, I should say, about a month prior to the filing of the bill, which was filed, as I remember it, about the first day of—about the first of January, 1902. Now I may be mistaken several days, or maybe two or three weeks on the matter of time, but that is my present recollection. That applies to all those answers in which I have spoken as having occurred in December.

Q With whom did you talk on the occasion of this visit to the office of the Foster Agency, when this matter was first discussed with you?

Mr. O'Connor: Same objections.

A It was either Glass or Fish.

Q Do you recall which?

Mr. O'Connor: Same objections.

A No.

Q Were they not both present?
Mr. O'Connor: Same objections.
A Possibly they might have both been present.
Q What now, did they say to you further than you have stated?
1132 Mr. O'Connor: Same objections.
A That is the substance of the conversation; I only talked a few minutes with them.
Q Is that all you recall of the conversation?
Mr. O'Connor: Same objections, because it is immaterial, incompetent, calls upon the witness to disclose privileged matter of his client.
Mr. Pease: Do you admit then the Foster Agency are his clients in this case?
Mr. O'Connor: R. G. Dun & Company are his clients and our clients. You are calling for matters that belong to R. G. Dun & Company, information which he acquired in his relation as attorney.
A Why, there was some further talk, I don't remember what it was; didn't go into any detail.
Q Was there anything said as to how Dun & Company had made this discovery?
Mr. O'Connor: Same objections.
A No.
Q Was there any paper submitted to you?
Mr. O'Connor: Same objections.
A No.
Q No list of names?
Mr. O'Connor: Same objections.
A No.
Q Certain about that?
1133 Mr. O'Connor: Same objections.
A List of names? I should say no list of names was submitted to me.
Q Look at this list of names attached to the affidavit of Stanley T. Prudence, filed in this case on January 17, 1902, and state whether that list was not produced to you by Mr. Fish or Glass at that time? A No, sir, it was not.
Q Nor any similar list? A No, sir.
Q You have seen that list before, have you not?
Mr. O'Connor: Same objections.
A Yes, sir.
Q When did you first see it?

Mr. O'Connor: Same objections.

A O, I think two days before, possibly not until the day, very day it was sworn to.

Q When was that?

Mr. O'Connor: Same objections.

A On the 17th day of January, 1902.

Q Where were you when you first saw this list?

Mr. O'Connor: Same objections.

A Well, I should say I was in my office.

Q Who produced it to you?

Mr. O'Connor: Same objections.

A O, when I first saw the list?

1134 Q List of names? A No, I will take that back, excuse me, I made a mistake. I think the first time I ever say that list was in Mr. O'Connor's office.

Q Who produced it to you?

Mr. O'Connor: Same objections.

A Mr. O'Connor.

Q Was that on the occasion of your first visit to Mr. O'Connor's office in connection with this matter?

Mr. O'Connor: Same objections.

A No, sir.

Q When was it that you first saw it? A Why, possibly about the first of January, 1902.

Q Who was present?

Mr. O'Connor: Same objections.

A I don't remember.

Q Who went with you, if any one, to Mr. O'Connor's office on the occasion of your first visit in connection with this matter?

Mr. O'Connor: Same objections.

A I don't remember that.

Q Was there any one?

Mr. O'Connor: Same objections.

A I am not certain that any one went.

Q Do you know who prepared that affidavit of Stanley T. Prudence which you hold in your hand?

Mr. O'Connor: Same objections.

1135 A Why, I think it was the joint production of Mr. O'Connor and myself.

Q Where was it first prepared?

Mr. O'Connor: Same objections

A I don't remember; I think it was prepared in my office;

I remember from the appearance of the typewritten part of the affidavit, exclusive of the names, list of names.

Q After you prepared it what did you do with it?

Mr. O'Connor: Same objections.

A I certainly submitted it to Mr. O'Connor.

Q Who requested you to prepare it?

Mr. O'Connor: Same objections.

A If anybody did, Mr. O'Connor did, or I might have prepared it upon my own motion.

Q Did you ever talk with Mr. Prudence regarding that affidavit prior to the time that you prepared it?

Mr. O'Connor: Same objections.

A I think I did.

Q Where?

Mr. O'Connor: Same objections.

A In Mr. O'Connor's office.

Q You never talked to him in your office? A No, sir.

Q How long before that affidavit was sworn to did you prepare it?

Mr. O'Connor: Same objections.

A I don't remember.

1136 Q Well, about how long?

Mr. O'Connor: Same objections.

A Why, it might have been within a week, it might have been within a day. I should say it was between the first of January, 1902 and the 17th of January, 1902.

Q You also prepared the affidavits of Wright and Gilbert that were filed in this case, did you not?

Mr. O'Connors: Same objections.

A I don't think I prepared any affidavits alone that were filed in this case.

Q Well, the affidavits that were filed in this case were prepared in your office, were they not?

Mr. O'Connor: Same objections.

A Very few of them were, I don't know that any of them were.

Q Didn't you first prepare these affidavits, or affidavits intended for these parties to sign and swear to, and send them over to Mr. O'Connor's office and they were afterwards revised by Mr. O'Connor?

Mr. O'Connor: Same objections.

A That might have occurred.

Q Well, isn't that the fact? A I think that in some cases—

Q In this case? A I mean in regard to some affidavits in this case. I prepared some affidavits in this case and submitted them to Mr. O'Connor, and Mr. O'Connor prepared some and submitted to me.

1137 Q Didn't you confer with Mr. Fish and Mr. Glass with reference to the preparation of these affidavits, and the affidavits which you drafted in this case?

Mr. O'Connor: Same objections.

A I think I conferred with Mr. Glass in regard to them.

Q Did you prepare the first draft of the bill?

Mr. O'Connor: Same objections.

A No, sir.

Q Did you compare this list of names?

Mr. O'Connor: What list of names?

Q Attached to the affidavit of Stanley T. Prudence, on file in this case, with reference to the books of R. G. Dun & Company and the Lumbermen's Credit Association, with any one?

Mr. O'Connor: Objected to as immaterial and as incompetent, and because it calls for the witness to disclose privileged matters.

A No, I didn't do any comparing.

Q Were you at Mr. O'Connor's office at the time this affidavit was signed, were you present?

Mr. O'Connor: Same objections.

A I don't remember.

Q Did you not confer with Mr. Gilbert and Wright in your office with reference to the preparation of the affidavits which they made in this case?

Mr. O'Connor: Same objections.

A Yes, sir.

1138 Q And was not Mr. Fish present?

Mr. O'Connor: Same objections.

A Possibly. Sometimes he was present, sometimes he wasn't.

Q And sometimes Mr. Glass was there? A I don't know, I have no recollection of Mr. Glass—O, excuse me, was Mr. Fish present? No, Glass was present and not Fish.

Q When the affidavits were prepared? A Sometimes Glass was present when I was talking with Mr. Wright or Mr. Gilbert; I talked with both of them when Glass was not present.

Q Was Mr. Moberly ever present? A No, sir. Well, present where?

Q At your office during the time that you were preparing these affidavits or during any interview with these parties, Wright, Gilbert—

Mr. O'Connor: Same objections.

A My best recollection is that he was not.

Q How many interviews did you have with Mr. Glass and Mr. Fish together or separately, regarding this matter?

Mr. O'Connor: Same objections.

A I had a good many certainly a dozen.

Q When did it begin?

Mr. O'Connor: Same objections.

A It began soon after I saw Mr. O'Connor first.

Q You mean at your office,—interviews at your office? A Yes.

1139 Q And when did you have the last interview with them?

Mr. O'Connor: Same objections.

A It has been several months, maybe six or eight months. Well, no, wait,—I might have seen Gilbert since then.

Q No, I am asking in reference to Mr. Glass and Mr. Fish; when was the last interview you had with either of those gentlemen?

Mr. O'Connor: Same objections.

Q Regarding this matter? A O, three or four months, I should say; since I talked with—

Q Either Fish— A —with Glass. I have talked with Fish since then.

Q When was the last time you talked with Fish?

Mr. O'Connor: Same objections.

A Probably a month ago.

Q Did you ever talk with Biederman about it?

Mr. O'Connor: Same objections.

A No, sir.

Q How many interviews did you have with Mr. Moberly regarding the subject matter of this suit, or the suit itself?

Mr. O'Connor: Same objections.

A O, probably—well, subject matter of the suit, I don't know as I have ever had any in regard to the subject matter of the suit, I have talked with him about the suit a good many times.

1140 Q Both before and since the bill was filed?

Mr. O'Connor: Same objections.

A I think I only talked with him once before the bill was filed.

Q Have you rendered any account to R. G. Dun & Company for services in this case?

Mr. O'Connor: Objected to because it is incompetent, immaterial, calls upon the witness to disclose privileged communications between him and his client, and because the account if it exists, would be the best evidence.

A I will decline to answer that question.

Q Have you rendered any account to the Foster Lumber Mercantile Agency for your services in this case?

Mr. O'Connor: Same objections.

A I decline to answer that question.

Q Or to Mr. Moberly or Mr. Fish or Mr. Glass, or either of them?

Mr. O'Connor: Same objections.

A I decline to answer that question.

Q Or to Biederman?

Mr. O'Connor: Same objections.

A I decline to answer that.

Q Did you confer with these same parties with reference to the preparation of the bill?

Mr. O'Connor: Objected to because it is immaterial, incompetent and calls upon the witness to disclose privi-
1141 leged matters of his client.

Q Gilbert, Fish, Glass and Moberly? A I did not confer with Mr. Moberly; I did confer with Glass, Gilbert, Wright, I don't remember of conferring with Mr. Fish.

Question read.

A No, I didn't, not with reference to the preparation of the bill I did not with any of them.

Q You prepared or assisted in preparing the bill after many interviews with these gentlemen, did you not?

Mr. O'Connor: Same objections.

A I had numerous interviews with the gentlemen mentioned except Mr. Moberly, as to the evidence, with reference to the evidence.

Q You conferred with some of the witnesses in this case, for the complainant, have you not?

Mr. O'Connor: Same objections.

A Yes, sir.

Q Mr. Ferguson?

Mr. O'Connor: Same objections.

A Ferguson, I don't remember that I ever—I don't know Mr. Ferguson, although I might have conferred with him. I

don't recall that I ever saw Mr. Ferguson. For whom is Mr. Ferguson employed now, or with whom?

Q Foster Lumber Mercantile Agency. A I don't remember of ever speaking to Mr.—

1142 Q They are the only people that have furnished any witnesses, you know.

Mr. O'Connor: I object to the statement of counsel,—

A I don't know that I ever saw Mr. Ferguson.

Mr. O'Connor: —as untrue and as immaterial.

Mr. Pease: On the material facts of the case outside of the record, outside of the comparison of the books, you wont deny that?

Mr. O'Connor: Most of the evidence we obtained by our own efforts.

Q How many times, all told, have you conferred with Foster, Fish, Gilbert, Wright and other employes or persons connected with the Foster Agency in connection with this matter?

Mr. O'Connor: Same objections.

A Well, there is no such man as Foster in connection with this.

Q Well, Foster F. Fish.

Mr. O'Connor: Same objections.

Q There is such a name as that, aint there? A I don't know what his name is, I only know him as Mr. Fish. I conferred with Mr. Glass and Mr. Wright and Mr. Gilbert several times.

Q About how many, approximately?

Mr. O'Connor: Same objections.

Q Approximately? A O, each of them three or four 1143 times, possibly oftener.

Q And also with Mr. Moberly?

Mr. O'Connor: Same objections.

A No, sir, not with Mr. Moberly.

Q You never talked with Mr. Moberly about this case?

Mr. O'Connor: Same objections; the witness has already answered the question.

A Yes, sir, I have talked with Mr. Moberly about this case.

Q How many times? A Not a good many times.

Q Several times?

Mr. O'Connor: Same objections.

A Several times.

Q How many times did you talk with Mr. Douglas or any

one else connected with R. G. Dun & Company, aside from Mr. O'Connor?

Mr. O'Connor: Same objections.

A I saw Mr. Griswold and I saw other people whose names—Mr. Prudence I think I recall now; names of other employes and persons connected with that office I don't recall their names.

Q Well, how many times did you see Mr. Griswold? Or did you talk with Mr. Griswold about this case?

Mr. O'Connor: Same objections.

A I think two or three times.

Q And you now recall Mr. Prudence, do you? A I don't recall the appearance of the man at all.

1144 Q How many times did you talk with him?

Mr. O'Connor: Same objections.

A O, couple of times.

Q In connection with what, his affidavit? A His affidavit.

Q Where did you first see Mr. Griswold?

Mr. O'Connor: Same objections.

A In Mr. O'Connor's office.

Q When was it?

Mr. O'Connor: Same objections.

A It was a very short time after I first saw Mr. O'Connor about this case, might have been the same day.

Q Was any one else present?

Mr. O'Connor: Same objections.

A Yes, sir.

Q Who? A O, two or three others, I don't remember who.

Q Remember any of them?

Mr. O'Connor: Same objections.

A No, I do not.

Q Was Mr. Fish there? A No, sir.

Q Or Mr. Glass? A No, sir.

Q Mr. Douglas? A No.

Mr. Pease: I think that is all.

Mr. O'Connor: That is all, Mr. Abbott.

1145 Examination of STANLEY T. PRUDENCE resumed, as follows: Deposition Stanley T. Prudence

Last question read as follows: "What did you compare at that time?"

Mr. O'Connor: Same objections.

A We compared the book spoken of with one of our reference books.

Q As to what? A As to certain ratings, &c.

Q Attached to what names? A I can't recall the names.

Q What did you have, if anything, to direct you in this comparison to any particular names?

Mr. O'Connor: Objected to as immaterial.

A I had nothing.

Q Did Mr. Fish, or the other gentleman? A Don't know who the other gentleman was.

Q Well, the other gentleman? A He did.

Q Who was it? A I don't know.

Q Was it a list of names?

Mr. O'Connor: Same objection.

A Yes, some form. I forget what—

Q List of names in some form? A No, stop a minute, I think that perhaps they were marked names marked in the book, the towns marked.

Q Well, did you have anything—what if anything did you have besides the two books?

1146 Mr. O'Connor: Objected to as immaterial.

Q I mean by "you" either of you? A Yes, there were some loose leaves.

Q What were on the loose leaves? A Names, with ratings.

Q And what do you mean by "ratings"?

Mr. O'Connor: Objected to because the loose leaves would be the best evidence of their contents and because the question calls for immaterial testimony.

A In most cases markings supposed to reflect capital and credit.

Q Ratings? A Yes.

Q Was the capital rating given in dollars and cents as well as the letter?

Mr. O'Connor: Same objections.

A Not in our book.

Q No, but on this list?

Mr. O'Connor: The witness has said that he wasn't sure that there was a list.

Q I mean the names on the loose sheets or leaves?

Mr. O'Connor: Same objections.

A I don't think they were given in dollars and cents.

Q Will you look at this list of names attached to the affidavit which you made in this case, and filed on January 17, 1902, and state whether that is the list of names or the papers which you had at that time? A I believe it is, sir.

1147 Q When did you first see that list of names?

Mr. O'Connor: Objected to as immaterial.

Q At that time? A At that time.

Q Who had it?

Mr. O'Connor: Same objection.

A This gentleman with whom I made the comparison between the books and leaves.

Q Was that the first you knew of this list of names?

Mr. O'Connor: Same objection.

A Yes.

Q Was it in the same condition then that it is now when you made the copy?

Mr. O'Connor: Same objection.

A No.

Q What if any changes have been made, or additions?

Mr. O'Connor: Same objection.

A This was made from the original notations which this gentleman and myself made, and then this was compared with the original.

Q With those original notations? A Yes.

Q Who made this list, if you know?

Mr. O'Connor: Same objection.

A I don't know.

Q Do you know whose hand writing these letters in red ink and the figures in blank ink are? A No.

Q Who compared this list with the original nota-
1148 tions or memoranda which was made at the time you made the comparison?

Mr. O'Connor: Same objections, as immaterial.

A I did in part.

Q With whom? A I don't know.

Q With this same party? A I don't know.

Q Where did you make the comparison? A In Hoyne, O'Connor & Hoyne's office.

Q When, with reference— A I think it was the same day, but another time of day.

Q Later in the day? A Yes.

Q Who made these notations to which you refer at the time you made the copy?

Mr. O'Connor: Same objections.

A I feel sure that I did.

Q All of them? A I feel sure that I was the one who made them.

Q What did you do with the notations which you then made?

Mr. O'Connor: Same objection.

A They were all taken away by the gentleman with whom I was working.

Q Have you seen them since? A Except in making comparison.

Q Have you seen them since you made this comparison?

Mr. O'Connor: Objected to.

A No.

1149 Q What kind of paper were they made on? A My recollection is they were made on the book itself, and the leaves, but I am not sure of that.

Q Which book were the notations made in?

Mr. O'Connor: Same objection.

A I think in the smaller book, not ours.

Q How, or in what manner were the names suggested as to which the ratings were compared?

Mr. O'Connor: Objected to as immaterial.

A I don't know.

Q Did you suggest the names? A No.

Q Who did? A The other gentleman said, now we will turn to town so and so, and gave me the name.

Q What if anything did he have before him at the time you were making this comparison? A I don't remember.

Q Did he have any memoranda, did you see any memoranda?

Mr. O'Connor: Same objection.

A I can't say that I did. I feel sure that he did, he must have had something to go by, but I don't remember what it was.

Q What did you compare?

Mr. O'Connor: Same objection.

A My recollection is this, that he would say, for instance,

Alexander City, Tallapoosa Oil Company,—you see that name?

Q Yes. A All right. Now in every case he would show me the name, whatever it was, that he had before him.

Q Which book did you use? A I am inclined to think
1150 that I used the smaller one, in fact I feel sure of that.

Q And he used the larger one? A Yes.

Q Now just how did he do it? Repeat that first, name, Tallapoosa Oil Company?

Mr. O'Connor: Same objection.

Q Tell us what you did and how you did it. A My belief is that he showed me on our book this name, and then say, have you found it there? Yes. Do you see this your rating in that case is "D" plus?

Q Yes, sir. A Now the rating here, what is the rating on the other concern, and we would compare them in that way.

Q That is, he would say, the rating in the Dun book is "D" plus? A Yes.

Q And ask you what the rating, the letter was? A Yes.

Q In the smaller book? A Yes, and he was particular to show me that ours was as he said, "D" plus.

Mr. O'Connor: That is, you looked at both books to see what the rating was?

A Yes, sir, we made a point of that.

Q How long did it take you? A I should say it took the best part of two hours.

Q How many names did you compare? A I don't know, didn't count them.

Q About how many?

1151 Mr. O'Connor: Same objections.

A It would be a wild guess.

Q Well, was there a hundred?

Mr. O'Connor: I object, because the witness has answered the question.

A It would be purely a guess, and I couldn't answer more definitely than I have.

Q Did you learn during the day, wheher this man with whom you made this comparison was from or connected with the Foster Lumber Mercantile Agency?

Mr. O'Connor: Objected to as immaterial and incompetent.

A Not further than already stated.

Q You understood that he was, did you not?

Mr. O'Connor: I object to the question as calling for a

conclusion, because the witness has already stated what he knew about the man, and because it is immaterial and incompetent.

A I think I said I was either told by him, or got the impression from him that he was connected with that—

Q With that agency?

Mr. O'Connor: Objected to.

A Yes.

Q You don't know who prepared this list? A No.

Q Have you now stated all that you did in connection with the comparison of those ratings? A I think I have.

1152 Q Didn't this party with whom you made this comparison tell you that he was from the Foster Lumber Mercantile Agency?

Mr. O'Connor: Objected to.

A No, sir, I wont say that he did.

Q How did you get the impression? A I don't know. I was trying to think of that this morning.

Q When and where did you first see the affidavit which you made in this case?

Mr. O'Connor: Objected to as immaterial.

A I believe it to have been made on the same day that I made the comparison of items in the office of Hoyne, O'Connor & Hoyne.

Q When did you make the comparison with reference to the time that you signed and swore to this affidavit?

Mr. O'Connor: Objected to as incompetent and immaterial.

A The comparisons, I believe, were made in the forenoon and that in the afternoon.

Q You mean by "that", this affidavit? A Yes, sir.

Q Who went with you, if any one, to Mr. O'Connor's office that day?

Mr. O'Connor: Objected to as immaterial and incompetent.

A Our Mr. Griswold in the afternoon only.

Q Who went with you in the morning? A No one.

Q You saw Mr. Abbott who just testified? A That gentleman, yes, sir.

Q Gentleman that left here? A Yes.

1153 Was he the party that was there that day? A He was there I believe that day.

Q Is he the party that made this comparison with you?

Mr. O'Connor: Same objections.

A No, and I shouldn't have known him except you spoke his name as he came in, and I remember his voice.

Q The only comparison which you made that day was with reference to the letters opposite the names referred to, was it not?

Mr. O'Connor: Objected to as incompetent and immaterial.

Q The letter indicating the capital rating? A Well, there was some others, such as references and spelling of names.

Q Anything else? A I think that practically covered it.

Q You made no comparison as to classifications? A Classifications, in what sense?

Q Business classifications? A As to the nature of the business, you mean?

Q Yes. A I don't remember that I did that.

Q Nor as to the credit ratings?

Mr. O'Connor: Same objections.

A I think capital was the main feature.

Q Well, it was the only— A Well, I am—

Q Did you make any comparison or investigation of the capital ratings opposite these names in this list as stated 1154 in dollars and cents?

Mr. O'Connor: Objected to as incompetent and immaterial. What do you mean?

A What do you mean?

Q Opposite Tallapoosa Oil Company is fifty to seventy-five thousand; five to ten thousand; fifty thousand to seventy-five thousand and seventy-five thousand to one hundred thousand.

Mr. O'Connor: Do I understand you to ask the witness if he looked to see what the letters given in the ratings indicated in dollars and cents?

Mr. Pease: No. You remember how the affidavit is made up?

Mr. O'Connor: Yes.

Mr. Pease: I ask him if he made any—

Mr. O'Connor: If he verified the figures?

Mr. Pease: Yes, that is another way of putting it.

A I informed myself by the key of the smaller book as to what those ratings meant.

Q In dollars and cents? A Yes, in dollars, not cents.

Q I understood you to say that the memoranda which you made was as to the letter only?

Mr. O'Connor: Objected to as immaterial and incompetent.

A When you said letter I thought you referred to the key in speaking of it as you did.

Q In what way?

1155 Mr. O'Connor: Same objections.

A For instance, if their rating in the smaller book was "D", I would then find out from the key what "D" meant.

Q Then what did you do? A I think I wrote it out.

Q Wrote out what? A I think I wrote out what it meant.

Q On this memorandum? A Yes.

Mr. Pease: Have you that memorandum?

Mr. O'Connor: I wouldn't say that I haven't or wouldn't say that I have. My recollection is that Mr. Prudence did hand me an original memorandum of the figures and ratings, whether I still have it or not, I don't know.

Q Will you please look at this paper, purporting to be an affidavit made by you on January 17, 1902, and on that date filed in this case, and state whether your signature appears on the third page or not? A That is my signature, yes, sir.

Q Was this list of names attached to it at the time? A Yes, sir.

Mr. Pease: We offer this in evidence as Defendants' Exhibit 1, of this date.

Paper so marked.

Cross-Examination by Mr. O'Connor.

Q You read that affidavit before you signed it? A

1156 Yes, sir.

Q Then you knew the contents of it? A I did then.

Q The facts stated in it were true, were they?

Mr. Pease: I object.

A Yes, sir.

Q You made the comparison between the books of R. G. Dun & Company and the Lumbermen's Credit Association mentioned in this affidavit? A Yes, sir.

Q And these ratings in the different columns opposite the different names, are the ratings which you found given to these names in the different books? A Yes.

Q And the amounts—the ratings are in letters, are indicated by letters; under the letters I find figures. Those figures are the translations of the letters according to the keys of the two books, are they? A Yes.

Adjourned to 3 o'clock P. M. of this day.

1157 December 19, 1902. Three o'clock P. M.
Met pursuant to adjournment;
Present, as before.

John R. O'Connor. JOHN R. O'CONNOR, being duly sworn and examined at the time and place above mentioned, upon his oath says:

Direct Examination by Mr. Pease.

Q You are acquainted with Mr Prudence who testified this morning? A I have met him in connection with this case.

Q Do you remember the occasion to which he testified this morning, in your office when the comparison of the list of names attached to his affidavit was made between the two books? A If your intention, Mr Pease, is to ask me any questions in regard to this case for the purpose of obtaining any information regarding it I want to say that all I know about this case I learned only in my capacity as an attorney for R. G. Dun & Company, the complainant in the case, and I emphatically refuse to testify in this case.

Q Well, I'm not asking these questions for the purpose of seeking or obtaining any information which you learned in connection with the case, or any communication be-
1158 tween you and your client or anyone representing them.

A I know nothing about this case, Mr Pease, nothing whatever, excepting what I have learned only in my capacity of counsel for R. G. Dun & Company complainant in this case. I do not know that I ever met Mr Prudence even, before I met him in this case, and all my dealings with Mr Prudence have been only as attorney in this case.

Q That's all, but this question doesn't call for any information, simply asks if you recollect a certain occasion. A Yes but I do recollect.

Q Now who was the party to whom you introduced Mr Prudence on that occasion, who assisted him in making this comparison? A I decline to answer any further questions along this line, and all I know about this case I know as attorney in the case. I absolutely refuse and decline to answer any question.

Q Do you decline to answer that question as to who the party was? A Until the court compels me to answer, yes.

Q Wasn't the party to whom you introduced Mr Prudence

Mr Foster F. Fish of the Foster Lumber Mercantile Agency? A I decline to answer the question.

1159 FOSTER F. FISH, being duly sworn and examined at the time and place above mentioned, upon his oath says: Deposit Foste

Direct Examination by Mr. Pease.

Q Please state your name in full. A Frank F. Fish.
Q What is your middle name? A Foster.
Q Your full name is Frank Foster Fish? A Yes sir.
Q Where do you live, Mr. Fish? A Chicago.
Q What is your business? A I am the President of the Foster Lumber Mercantile Agency.
Q And how long have you held that position? A Since '99.
Q What business is the Foster Lumber Mercantile Agency in?
Mr. O'Connor: Objected to as immaterial and incompetent.
Q You may answer, subject to the objection.
A Why, they are publishing a reference book in the lumber trade.
Q Mr Fish when did you first learn or hear of this case?
Mr. O'Connor: Objected to as immaterial and incompetent.
A I don't know that I can recall the date.
Q Well, approximately when?
Mr O'Connor: Same objection.
A Why, I should say it was along in the fall of 1901, that is my recollection of it.

1160 Q When did you first talk with Mr. Griswold of the R. G. Dun & Company Agency with reference to the subject matter of this suit?

Mr. O'Connor: I object to the question as assuming a fact not shown by the evidence that he did talk with Mr Griswold, and as immaterial and incompetent.
Mr Pease: That appears in the testimony already taken.
A I don't recall the date.
Q When, with reference to the time that the bill was filed?
Mr. O'Connor: Objected to as incompetent and immaterial.
A I don't know as I get your question.
Q Was it before or after?
Mr O'Connor: Same objection.

of
F. Fish.

A It was before the bill was filed.

Q About how long before the bill was filed?

Mr O'Connor: Same objection.

A I don't know that I recall that. You see, I am absent most of the time, I'm out of the City a great deal, and it was along there at the time prior to the thing; just when, I don't remember, had no occasion to recall it in any way.

Q Well, did you talk with him more than once about it?

Mr O'Connor: Same objections, immaterial and incompetent.

A I decline to answer that question.

Q Why? A Because I don't see any occasion for answering it.

Q Did you talk with any one else connected with R. G. Dun & Company besides Mr Griswold regarding the subject matter of this suit prior to the time the bill was filed?

1161 Mr O'Connor: Same objection.

A I believe not.

Q Isn't it a fact that you talked with Mr Douglas of that agency regarding that fact, prior to that time.

Mr O'Connor: Same objection.

A Mr Douglas may have been present when I talked with Mr Griswold, in my talks with Mr. Griswold.

Q Where did you have these talks with Mr Griswold and Mr Douglas?

Mr O'Connor: Objected to as assuming that he had a talk with Mr Douglas, and because it is incompetent.

A I am not very sure that I know the Douglas you are speaking of; Griswold was the only gentleman connected with the Dun Company that I had any acquaintance with.

Q Where did you have your talks with Mr Griswold then? A They took place at Mr Griswold's offices; who was present I don't know, I don't recall.

Q Whose office, Griswold's? A Mr Griswold's private office.

Q In connection with the office of R. G. Dun & Company? A Certainly.

Q Were you ever in the office of Mr O'Connor in connection with this matter?

Mr O'Connor: Objected to as immaterial and incompetent.

A Yes sir.

Q About how many times have you been to his office in 1162 connection with this matter?

Mr. O'Connor: Same objection.

A I don't know that I counted.
Q Approximately?
Mr O'Connor: Same objection.
A I don't know that I could advance an approximation that would be accurate.
Q Well, several times?
Mr O'Connor: Same objection.
A I should say several times, yes.
Q Who went with you if anyone at any time to Mr. O'Connor's office?
Mr O'Connor: Same objection.
A Mr W. A. Glass was with me.
Q Who was Mr Glass?
Mr O'Connor: Same objection.
A Mr Glass is the treasurer of the agency I am identified with.
Q Any one else?
Mr O'Connor: Same objection.
A Not that I recall.
Q Did you ever meet any one else there from or connected with or representing the Foster Agency?
Mr O'Connor: Same objection.
A I don't recall it.
Q Do you know Mr Edwin F. Abbott?
1163 Mr O'Connor: Same objection.
A I know Mr Abbott.
Q Did you ever meet him there?
Mr O'Connor: Same objection.
A I don't recall seeing him there.
Q Do you know?
Mr O'Connor: Same objection.
A No sir.
Q Do you recall being at Mr O'Connor's office in January of this year shortly before the bill was filed in this case, and making a comparison of certain names and ratings in the book of R. G. Dun & Company and the Lumbermen's Credit Association?
Mr O'Connor: Same objection.
A I don't recall making any such comparison.
Q Well, do you know Stanley T. Prudence?
Mr O'Connor: Same objection.
A Don't know that I have ever seen him, no sir.
Q Will you examine the affidavit of Stanley T. Prudence

n of F. Fish.

filed in this case together with the list of names attached as Exhibit A, names and ratings, and state when you first saw it, if at all?

Mr O'Connor: I object to the question because it assumes that the witness saw it, when there is no testimony that he ever did see it, and because the question calls for incompetent and immaterial testimony.

1164 (Witness examines paper handed him by counsel)

A I have no recollection of having seen this document at all. I have not seen any of the affidavits in this case at all.

Q Do you recall having seen a list of names similar to that list?

Mr O'Connor: Objected to as immaterial and incompetent.

A Seen a great many lists of names.

Q I say a list of names similar to that list? A I don't recall any list of names.

Q Have you examined the list of names in this list?

Mr O'Connor: Same objection.

A In what way.

Q To notice what names are contained in the list? A Not specially; it would take a great deal of time to do that.

Q Will you please do so? A You mean the names appearing on this list here?

Q Yes, names of firms, corporations and persons.

Mr O'Connor: Same objection.

(Witness examines list)

Q Have you examined it so as to notice the names? A Yes sir.

Mr O'Connor: Same objection.

Q Do you recognize any of the names as having appeared or been in any list of names that you ever saw before?

1165 Mr O'Connor: Same objection.

A I think I have seen some of the names.

Q In a list of names: was that list of names prepared in your office? A This was not a prepared list that I have in mind.

Q Well, there was a list of names containing some of the names in this list at least, or all of them, or any of them prepared in your office, was there not?

Mr O'Connor: Same objection.

A I may have jotted them down in my office, or jotted them down in my home as I was gathering the little points that I found useful in connection with my business and work.

Q You use a list of names, if not this list of names, in connection with your business, do you not?

Mr O'Connor: Same objection.

A In business I make use of a list of names,—couldn't do business without a list of names.

Q Just observe the question Mr Fish.

Mr O'Connor: I think he has answered your question fairly.

Mr Pease: I have no doubt we will get along without your suggestion, Mr O'Connor.

Q I refer to the list attached to the Prudence affidavit which is the only list that has been examined by the witness or referred to. Did you not use this list of names in canvassing for subscribers to the Foster Agency?

1166 Mr O'Connor: Same objection.

A I believe not.

Q Did you not use a similar list containing many of these names, if not all?

Mr O'Connor: Same objection.

A I never used a list compiled in that way.

Q In any way, the names, the list of names?

Mr O'Connor: Objected to as immaterial and incompetent.

A I never make a canvass without using a list of names, got to have it.

Q Did you not submit this list of names or show it,—the list attached to the Prudence affidavit or a list containing the names contained in this affidavit, or many of them, to a party in St Louis?

Mr O'Connor: Same objection, immaterial and incompetent, and because the list is the best evidence.

A I wish you would repeat that question. I do not recall it fully.

Question read by the reporter.

Mr O'Connor: Same objection.

A I do not recall.

Q Don't recall what? A Showing that list to a St Louis party; I may have used a list with some of those names on it, I wouldn't be certain as to that, it is quite possible I did in connection with St Louis work.

1167 Q In what way did you use it, for what purpose?

Mr O'Connor: Objected to as immaterial and incompetent.

A Used it for the purpose of securing business for the organization I represented.

n of
F. Fish.

Q In what connection?

Mr O'Connor: Objected to as immaterial and incompetent what this witness may have done in the absence of the complainant.

A In connection with showing up the advantage of the Foster work over some of the authorities that they had in that office at the time.

Q What authorities?

Mr O'Connor: Same objection.

A I don't know as I recall what they may have been using.

Q Wasn't it the Lumberman's Credit Association reference book?

Mr O'Connor: Same objection.

A Quite possibly they had it there.

Q Don't you know that was?

Mr O'Connor: Same objection.

A It may have been.

Q Well, don't you know that it was?

Mr O'Connor: Same objection.

Q What do you say about that? A I thought I had answered your question.

Q You hadn't. A Excuse me, you'll have to repeat it.

1168 Last two questions read by the reporter.

A It may have been.

Q Did you not claim to the parties that you showed that list to that certain ratings giving the names in that list in the reference book of the Lumberman's Credit Association had been copied from R. G. Dun & Company's reference book?

Mr O'Connor: Objected to as immaterial and incompetent.

Q Because or for the reason that the ratings,—because letters were similar, indicated the capital ratings?

Mr O'Connor: Same objection.

A I probably stated to the party you have in mind in St Louis that in my judgment the ratings which appeared in Mr Clancy's book had been copied from R. G. Dun's.

Q Now the ratings as to what names?

Mr O'Connor: Same objection.

A Such names as we might have been discussing on that occasion.

Q Contained in that list? A Certainly.

Q And did you not show that list to other people aside from the one that you have in mind, in St Louis?

Mr O'Connor: Same objection.

A What party have you in mind? We may not have the same party.

Q I thought you said that you are referring to the party I had in mind? A I didn't count the number of people

1169 I showed it to

Q Well, did you show it generally to the people whom you approached?

Mr O'Connor: Same objection.

A I should say I did not show it generally.

Q Well, how many did you?

Mr O'Connor: Same objection.

A I don't know what you would call general.

Q How many did you submit it to?

Mr O'Connor: Same objection.

A I don't know as I can recall; I see a great many people in my work.

Q Well, how many? One in twenty, one in ten, one in five?

Mr O'Connor: Same objection.

A I wouldn't attempt to give an estimate.

Q You showed it to a good many in your work?

Mr O'Connor: Same objection.

A I stated I showed it where I had occasion; I don't recall the number of cases.

Q Did you prepare the list that you used?

Mr O'Connor: Same objection.

A My recollection is that I did.

Q Where is that list?

Mr O'Connor: Same objection.

A I don't know where it is right now.

Q When did you last see it?

1170 Mr O'Connor: Same objection.

A I don't know as I recall just when I last saw it.

Q Where was it when you last saw it?

Mr O'Connor: Same objection.

A Somewhere in my papers.

Q And where were your papers at that time?

Mr O'Connor: Same objection.

A In the envelopes that I use in connection with my business.

Q Where do you keep those papers?

Mr O'Connor: Same objection.

A Generally keep them in my office.

Q And when did you last see them?

Mr O'Connor: Same objections.

A I don't know as I can recollect.

Q Well, approximately? A I wouldn't attempt to approximate it.

Q Have you seen it since this suit was commenced?

Mr O'Connor: Same objection.

A I don't know that I have, don't know that I have not.

Q In whose possession was the list when you last saw it?

Mr O'Connor: Same objection.

A It was in my possession.

Q Did you submit that list to Mr Griswold?

Mr O'Connor: Same objection.

A I did not.

1171 Q Did you submit it to Mr O'Connor?

Mr O'Connor: Same objection.

A No.

Q Have you a copy of it?

Mr O'Connor: Same objection.

A I did not submit it.

Q Was it submitted to Mr O'Connor?

Mr O'Connor: Same objection.

A I don't know as it was.

Q What did you mean when you said "I did not submit it"?

Mr O'Connor: Same objection.

A You asked me, and I said I didn't.

Q Do you know who did.

Mr O'Connor: Same objection, and because the question assumes a fact not shown in the evidence that the list was ever submitted to Mr O'Connor.

A I don't know as I do.

Q Do you know whether Mr Glass submitted the paper to Mr O'Connor?

Mr O'Connor: Same objections.

A I am not certain as to that.

Q Were there more than one copy of this list prepared?

Mr O'Connor: Objected to as incompetent and immaterial.

A I don't know how many lists were prepared.

Q Well, was there more than one? A I don't know as to that; I have had a great many lists prepared in con-

1172 nection with my work by the stenographer in my office from time to time.

Q I am now referring to the list which you used in connection with your business when canvassing for subscribers

to the Foster Agency and which was used for the purpose of indicating or claiming that certain ratings had been copied by Clancy from the Dun book; did you ever have more than one of those lists? Depos Fos

Mr O'Connor: Objected to as immaterial and incompetent.

A No, I perhaps would renew the list, carrying it in my pocket it would become worn and I might refresh it by simply copying it on a fresh sheet so that it would be legible.

Q When did you begin using that list?

Mr O'Connor: Same objections.

A I began using that list about—oh, within a short time from the time that I first began to work in the field.

Q When did you begin that work?

Mr O'Connor: Same objections.

A Began, if I remember, along in June 1899.

Q Were names added to it from time to time?

Mr O'Connor: Same objections.

A Were names added to it?

Q Yes; that is, did you discover new and additional names from time to time? A O, I continued using the list I originally had.

1173 Q When did you last use it?

Mr O'Connor: Same objections.

A I don't know that I can recall the time that I last used it.

Q Have you made any use of it since this suit was begun?

Mr O'Connor: Same objection.

A I may have had occasion to use it since the suit began.

Q Do you recollect whether you have or not?

Mr O'Connor: Same objection.

A I don't know as I remember exactly as to that.

Q How did you come to prepare this list?

Mr O'Connor: Same objections.

A I considered perhaps it would be of some service in connection with our work.

Q Just what did the list—just how was the list made up, what did it show?

Mr O'Connor: Same objections, and because the list itself would be the best evidence.

Mr Pease: Well it is lost.

A Why, it showed some names with ratings.

Q Well, what ratings?

Mr O'Connor: Objected to as incompetent and immaterial.

A Why I don't remember the details of the ratings, the different letters that were shown, you know.

Q I mean with reference to the same name?

1174 Mr O'Connor: Objected to as immaterial, and because the list would be the best evidence of its contents.

Q You didn't take all of the names you found in Dun's book or all of the names you found in Clancy's book, did you? You took certain names. Now what determined the names which went into that list?

Mr O'Connor: Objected to as immaterial and incompetent.

Q That is, why did you select one name instead of another? A I simply took the names as they came to me through various sources.

Q Well, but what distinctive feature of the rating determined whether the name was one that you wanted on the list or not?

Mr O'Connor: Same objections.

A Somewhere down South my attention was directed to a rating,—I don't know as I recall the name right now,—in which—my informant was interested in the company, and he called my attention to the fact a rating in Dun of something like I think $50,000 was about fair, and the rating published in another agency was way below the right figure, and it occurred to me that the same letter was used, and as I had been informed by various employees of Mr Clancy who would come over to us that his book was copied from Dun's book and that they had been employed in doing that work, I very naturally figured that was one little instance of it and jotted it down.

1175 Q Then you took the names in which the letters indicating the capital rating were the same, did you?

Mr O'Connor: Objected to as immaterial and incompetent.

A Where the letters were the same?

Q Yes. A Where the letters were the same but where the name is entirely different.

Q I understand in making up this list you took only the names where the letters indicating the capital rating in each book, that is Dun's and the Lumberman's Credit Association, was the same, is that right?

Mr O'Connor: Objected to as immaterial and incompetent.

A That is correct,—

Q But— A Just a moment. There were other names used on that list where the letters were not the same.

Q But where the amount of capital rating was the same?

A No; there were letters used—there were some boot and shoe manufacturers down East, manufacturers of boots and shoes, and in using those names I paid no attention to the ratings at all.

Mr O'Connor: What was peculiar about that boot and shoe firm? A My attention was directed to the fact that the book published by Mr Clancy's company had in it some boot and shoe manufacturers and had them in as manufacturers of sash and doors, and I wrote the manufacturers of
1176 boots and shoes down East and asked them if they were in any way connected with the sash and door business.

Q This is not in answer to any questions. A I answered that because you wanted to know if I used any names without capital rating, and it occurred to me about this firm.

Q You did use other names showing the capital rating where the amount was the same but where the letter was different?

Mr O'Connor: Objected to as immaterial and incompetent.

A I think not.

Q How did you come to go to see Mr Griswold in connection with this matter?

Mr O'Connor: Same Objection.

A I had various reasons for calling at the office of Dun & Company for the past ten or eleven years.

Q Who suggested to you, if anyone, your calling on Mr Griswold in connection with this particular matter?

Mr O'Connor: Same objection.

A No one.

Q You say no one suggested to you?

Mr O'Connor: Same objection.

A I was in and out of Dun's office, various matters took me in there, and Mr Griswold asked me one day what I knew about the Lumberman's Credit Association using their ratings and reports.

1177 Q Had you talked with Mr Glass about going to see Mr Griswold?

Mr O'Connor: Same objection.

A I believe not.

Q You had not?

Mr O'Connor: Same objection.

A I believe not.

Q Hadn't you talked over with Mr Glass the matter of getting Dun & Company to bring this suit, before you ever went to see Mr Griswold?

Fish.

Mr O'Connor: Same objection.
A I believe I knew Mr Griswold before I knew Mr Glass.
Q That isn't answering my question. Did you not talk with Mr Glass about seeing Mr Griswold in connection with bringing this suit?
Mr O'Connor: Same objections.
A I don't recall any such conversation.
Q Have you talked with anyone about this case since you were subpoenaed today?
Mr O'Connor: Same objection.
A Since I was subpoenaed?
Q Yes. A Yes sir.
Q Who? A Talked with Mr Abbott.
Q Anyone else?
Mr O'Connor: Same objection.
1178 A That is all.
Q What Mr Abbott do you refer to?
Mr O'Connor: Same objection.
A I believe his name is Edwin,—I don't know.
Q Edwin F. Abbott? A I don't know what his middle name is, I am not sure as to that.
Q Have you that list of names in your possession now, which you prepared?
Mr O'Connor: Same objections.
A I don't know as to that.
Q Where is it if you have it?
Mr. O'Connor: Same objections.
A Might be in one of two or three places.
Q Will you look and see if you can find it?
Mr O'Connor: Same objections.
A Yes sir.
Q And are you willing to produce it here?
Mr O'Connor: Objected to as immaterial and incompetent.
A No objections if I can find it.
Q When will you look for it and can you look for it?
Mr O'Connor: Same objections.
A I can look for it within a day or two.
Q Well, that is by Monday, then?
Mr O'Connor: Same objections.
A I presume so.
Q Will you communicate with me as to the result of
1179 your search?
Mr O'Connor: Same objections.
Q When it is completed.

Cross-Examination by Mr. O'Connor.

Q Do you remember whether Mr Douglas or that Mr Douglas was ever present in any of your interviews with Mr Griswold? A My recollection of the thing, Mr O'Connor, is that when I was talking with Mr Griswold on one occasion Mr Douglas came in; now whether he was there any length of time I don't remember.

Q That is the only occasion on which you remember that he was in the room while you were talking with Mr Griswold, is it? A Yes sir.

Q And, as I understand you, you don't remember whether he took any part in that interview or not? A I believe he did not, that is my recollection, I believe he stood there a few minutes, and wasn't active in it.

Mr Pease: I move to strike out the answers of the witness in which he refers to statements made to him by other people—other employees of either agency as being hearsay evidence and as not responsive to the question.

1180 WILLIAM CLANCY, being duly sworn and examined at the time and place above mentioned, upon his oath says:

Direct Examination by Mr. Pease.

Q Please state your name? A William Clancy.

Q Where do you live? A 4530 Woodlawn Avenue, Chicago.

Q What is your business? A President of the Lumberman's Credit Association.

Q What business is the Lumbermen's Credit Association engaged in? A Engaged in publishing a reference book devoted exclusively to the lumber interests.

Q What do you mean by "lumber interests"? A Covering the manufacturers, and wholesale and retail dealers in lumber, and wholesale consumers, buyers,—such as the woodworking manufacturers of all kinds.

Q How long have you been engaged in this line of business? A Twenty-six years.

Q When was the Lumberman's Credit Association organized, incorporated?

Mr O'Connor: Objected to because the record of its incorporation is the best evidence.

A In 1893.

Q Under what name was the business carried on prior to that time? A Lumber Mercantile Association.

1181 Q Will you please explain in detail the nature and character of the business? A As heretofore stated, we publish a reference book covering the people in the line of trade mentioned, and in addition to that we furnish special detailed information called mercantile reports to our subscribers, and we also publish supplements to the books and letters.

Q How many employees did you have in 1901?

Mr O'Connor: Objected to as immaterial.

A From twenty-five to thirty-five, it depended on the time of year as to whether we were engaged in compiling the work on our book, or the regular office work.

Q Of what did the expenses—costs of conducting the business amount to in 1901?

Mr O'Connor: Objected to as immaterial.

A $40,295.

Q Does this include any salary or compensation to yourself?

Mr O'Connor: Same objection.

A No sir.

Q How much of this amount was for postage?

Mr O'Connor: Same objection.

A $7,340.

Q What will the volume of mail average daily?

Mr O'Connor: Objected to as immaterial.

A From three to five hundred letters a day.

1182 Q What is the scope of the reference book published by the Lumbermen's Credit Association with reference to distinguishing features from other agency reports, particularly complainant's?

Mr O'Connor: Objected to as immaterial and because the books themselves are the best evidence of their contents.

A In the first instance, the book is devoted to one line of trade, and in addition to what the complainant's reference book covers it is a railroad guide, a bank directory, an express guide, an attorneys' list, and we have marginal space ruled lines for the use of our subscribers in compiling their freight rates to the different towns, and we also have a blank margin

on the right hand side of the names for any additional data which they may desire to place against the names for anything, information in the shape of changes of firms or any data that changes the financial standing of a concern, and any new names of dealers which are reported by us, and all other information in the way of delinquencies and matters pertaining to the credit of parties whose names appear in the book; and we have for a convenience, the quickly finding of a state, we have a marginal index.

Q How about Justices of the Peace directory in towns where there are no attorneys?

Mr O'Connor: Same objection,—the books themselves are the best evidence of their contents.

A We have a list of Justices of the Peace in towns
1183 where there are no attorneys.

Q In what way is this information compiled, or how is it arranged in the book?

Mr O'Connor: Objected to because it is immaterial and because the book is the best evidence of its contents.

A It is compiled all under the heading of the town and county with the exception of the railroads and population which appear above the names,—in other words, all the information pertaining to a town is included under the town.

Q Are these different items of information which you have mentioned, given in complainant's book as arranged in yours?

Mr O'Connor: Objected to as immaterial, because the books are the best evidence of their contents.

A No, sir, they are entirely different.

Q How about the classification in business?

Mr O'Connor: Same objection.

Q Or, how about business classifications in the two books?

A Business classifications in our book, the Lumbermen's Credit Association, is more fully defined, especially as to the character of lumber manufactured, and whether or no they are manufacturers or wholesale dealers, or whether they are country yard people or people who are wholesalers and do not carry a stock of lumber; this feature of knowing the fact that they do not carry a stock of lumber is very important in
the matter of extending credit; it indicates that a party
1184 has no tangible assets.

Mr O'Connor: I move that the part of the witness's answer beginning that "it is important" &c be stricken out, as stating a mere conclusion of the witness.

f
lancy.

A That in connection with the country yard lists, that is the dealers who have a list of country yards, we make a special point to show where the purchasing department is instead of simply making a reference to the headquarters, indicating that if a subscriber desires to sell a concern, a yard line concern, of which I have the list of yards, they must go to the purchasing office to make their sales; it saves them the expense of soliciting business from these different yards who are not buying direct.

Mr O'Connor: I move that the last part of the witness's answer be stricken out as stating a mere conclusion of the witness.

Q Is this information given in complainant's book? A It is not.

Q What different classifications in the lumber trade do you make in your reference book?

Mr. O'Connor: Objected to as immaterial and because the book is the best evidence of its contents.

A We show the retailers as simply lumber; saw-mills as saw-mills; manufacturers, showing the kind of lumber manufactured generally and whether they are hard-wood manu-

1185 facturers or yellow pine.

Q Do you recall any others? A Well, we have a number of other classifications of business covering the consuming or wood-working lines.

Q What are those?

Mr. O'Connor: Objected to as immaterial, and because the book is the best evidence of its contents.

A Such as the manufacture of furniture, harvesters, pianos, and a long list of people covered, as we term them, under wood-working lines. I can't recall them all from memory

Q Are these different classifications shown in complainant's book?

Mr O'Connor: Objected to as immaterial, and because the book it the best evidence of its contents.

A Some of the wood-working lines would be.

Q They are not all shown?

Mr O'Connor: Same objection.

A I think not, no sir.

Q What is the difference in the ratings given in the two books?

Mr O''Connor: Objected to as immaterial, and because the books are the best evidence of their contents.

A The Dun book has a capital and credit rating, the Lumberman's Credit Association book shows a capital and pay-rating. Deposit Willi

A What do you mean by a "pay-rating", Mr. Clancy?

1186 A Prompt pay, medium pay, slow pay, or very slow pay, indicating the manner in which a man meets his maturing obligations.

Q Does this pay-rating in your books have any reference whatever to the credit rating?

Mr O'Connor: Objected to as immaterial and because the book is the best evidence of its contents.

A No sir.

Q Is the pay-rating based at all or have any connection with or dependence upon the capital rating?

Mr O'Connor: Same objection.

A It has not; entirely independent of the capital rating; signifies how a man pays his bills.

Q That is, his manner of paying. What other information is contained in the kep used in the Lumberman's Credit Association book, aside from the capital and pay ratings?

Mr O'Connor: Objected to as immaterial, and because the book is the best evidence of its contents.

A We have about 113 different characters of delinquencies and showing incumbrances and all referring to the condition of a party's standing, as to how he may be affected from time to time, all covered by the numbers or information following the same.

Q Are any of these items of information contained in the complainant's book?

1187 Mr O'Connor: Objected to as not material and because the book is the best evidence of its contents.

A None that I know of.

Q What territory is covered by your book? A United States and Canada.

Mr O'Connor: Same objections.

Q How does that compare with the territory covered by complainant's book?

Mr. O'Conor: Same objections.

A They have additional territory in their book, as I recollect they have British Columbia and Nova Scotia, Ontario or Canada, possibly others that I don't recall.

Q From what sources does the Lumberman's Credit Association receive information regarding the worth and stand-

of Clancy.

ing and credit of persons, firms and corporations engaged in lumber and kindred lines, in the territory covered by its reference book? A We receive information from our subscribers, attorneys, banks, correspondents, and we receive our information through the revision work, the financial statements, subscribers weekly reports, five or six clipping bureaus, about 20 trade newspapers, lists prepared by railroad companies showing the mills and dealers on their lines of road, information from the retail lumber dealers' secretaries, six or seven or them that go over our list before our book is published and look it over and furnish us with the data as to the retail
1188 dealers coming under their—to their knowledge; we have law bulletin reports, special agency reports referring particularly to local agents in cities and towns, information through our tracer system, special trade reports, bank references, and trade references, personal blanks, information received through postal cards sent to the towns; may be some other sources I don't recall just now.

Q Do you have a collection department? A Yes, we have a collection department; we receive a considerable amount of valuable information from that department, showing the condition of a man's credit.

Q Have you any travelling men? A Yes, we have travelling men on the road.

Q How many? A We have two travelling at the present time, and one that travels part of the time.

Q What are their duties? A Their duties are to revise the towns which they go to, send us in daily reports of changes, new names, and all data important to our work.

Q What, if any, arrangement have you with your subscribers with regard to reporting delinquents? A Well, a contract which we take covering the subscription to our agency which requires the subscriber to report their delinquent creditors, and any other information.

Q Do you receive such reports? A We receive such reports yes sir.

Q Did you mention country yard lists? A I did not.

Q Of what do they consist? A Country yard lists
1189 consist of corporations or firms or individuals operating what is generally termed line yards, being a number of retail lumber yards situated at different points; we have hundreds of these lists containing upwards of of thousand or more names.

Q Names of who, or what? A Showing the style under which the yard is operated and indicating the point at which purchases are made for these yards, or if not purchases made at one principal yard or headquarters, indicating that they buy at each yard; in that case we would show in our book a reference of See headquarters for the capital and pay rate.

Q Did you mention inquiries from the subscribers as a source of information,—did you have such? A I overlooked that, that is a very important adjunct to the work of the office as we gather a large number of new names in that way, these are called inquiry tickets, received from subscribers for a report as to the financial standing of the concern inquired about.

Q You mention correspondents; where have you correspondents? A Correspondents are located in the towns and cities throughout this country and Manitoba.

Q That is, what towns and cities? A Nearly all of the towns—you refer directly to attorneys?

Q Well yes, have you attorneys, Justices of the Peace, where are they located? A We have a very large list of attorneys and Justices of the Peace who act as our correspondents.

1190 Mr O'Connor: Are they the correspondents to whom you refer?

A They are part of them.

Q How often is the reference book published by the Lumberman's Credit Association, issued? A It is issued twice a year, in July and January.

Q What, if anything, is done with each of these issues? A A revision of the work is made covering the towns and cities and names in the book.

Q In what manner is this revision made, how is the work done, the manner? A Why, we have a revision blank which we use, and on this blank is pasted the name of the town, county, and the names of dealers which are shown in our last previous book, being a slip cut from that work and pasted on this blank, and the names are written on the blank also.

Q Do you have or keep an office tickler? A Yes, we have an office tickler.

Q Describe that and the use that is made of it.

Mr O'Connor: I object to the question as calling for the contents of a book, the book itself being the best evidence.

Mr Pease: The manner in which it is kept and use made of it doesn't call for the contents of the book.

n of
Clancy.

A It is a book being our last published edition interleaved with ruled paper between the pages so that we may have room for inserting the new changes, new names,
1191 firms and corporations and ratings that are compiled during the interim from the time our book is published until the next one is issued.

Q About what per cent of changes is there in each of these revisions? A I would say there was about ten per cent.

Q Now in what manner is this revision on the book done? A When these blanks are prepared—

Mr O'Connor: What blanks?

A The revision blanks are prepared as I have stated, they are sent to our correspondents for information as to the financial standing of the parties named on the blanks, and as they are returned they are put into State order according to towns alphabetically.

Mr O'Connor: So that the revision blanks when finally arranged would be in the same order of States and towns as the names of the new States and towns appear in your books? A Yes, as they should be.

Q How much time is occupied in each of the revisions of this book? A It takes from—about three months and a half from the time the work is started.

Q In this revision work what other source of general information is used aside from the revision reports?

Mr O'Connor: Objected to because, as I understand, the witness has already stated all the sources of information.

Q I wanted to know if they are all used in the revision work, but are the other sources, original sources of in-
1192 formation that you have named, used in connection with the revision work? A Yes sir, all the new names that appear on the tickler are sent out for information, and also—

Q Yes, but when you come to do the revision work itself on the book are these other sources, original sources of information which you have enumerated, in use by the revisers in making the revision? A I don't understand your question, Mr. Pease.

Q Well, do the revisers use all of the information which you have described in making their revision?

Mr O'Connor: Objected to.

A Certainly.

Q Well, what use is made of the red bound book, Mr.

Clancy,—first, you may describe that red bound book. A The red bound book startes with blank sheets on which are pasted the pages of the last edition of our reference book covering the States which we prepare book for, for instance, if we were issuing the January book this book would contain pages from the July edition, referring to the book of the Lumberman's Credit Association; on both sides there are margins. This book is then bound in manila cover with backing of red.

Q And in what manner are they bound up? A Bound up in States.

Q Now then, what is done with it? A The books
1193 are turned over to Thorbus & Company to secure the new names and ratings as are shown in other reference books.

Q What other reference books, Mr. Clancy? A It is my understanding they are Bradstreet's and Dun's.

Q Now what use is made of those red bound books, Mr. Clancey, in doing this revision work?

Mr O'Connor: Objected to because the question calls for a fact which the witness may or may not know; the question is not limited to his own work or to his own knowledge.

Q If you know? A I know what is done in connection with the revision work, I think.

Q Well, you know you know, don't you? A Yes.

Q Are you familiar with the revision work done on your own book? A Yes, thoroughly so.

Mr O'Connor: Objected to; calls for a mere conclusion of the witness.

Q Have you done any of this revision work yourself? A I think I have years ago, but—

Q Now, what use is made of the red bound book in this revision work?

Mr O'Connor: Same objections.

A We take the new names from same and send them to our correspondents for financial reports as to their worth and general standing.

Q Well, what else, what other information, if any? A There may be some new towns we send to.

1194 Q You send the new names to correspondents for their standing as to financial worth; and what else? A And their pay, local credit.

Q And what else? A That's all.

nn of
s Clancy.

Q And what line of business they are engaged in?

Mr O'Connor: Objected to as leading and suggestive.

A Well, the revision blank itself shows that we want to know the line of business that the party is engaged in.

Q Now then, what further use is made of the books, these red bound books in this revision work? A They are sometimes used by the raters for comparison.

Q In what cases are they used for comparison? A In cases where a very much higher capital or worth report is received from the correspondent on the blank for the revision which they are working on.

Q Higher than what? A Very much higher than the rating as shown in the printers copy of our previous book, which is the rating—our previous rating.

Q Of what is the printers copy that you refer to Mr Clancy,—how is that made up and what is it used for? A The printers copy of our book is made up very similarly so far as the mechanical part of it is concerned, as the red bound book; it contains the page as shown in our last previous book.

Q That is, the printed page? A Printed page, and we have all the pages in a book by States, separate.

1195 Q Now, what use was made of this printers copy by the revisers?

Mr O'Connor: Objected to because the question is not limited to witness' own use of the book and therefore is not limited to his own knowledge.

A It is used in making correctiong for the next edition of our work, adding corrections to the book for our next edition of the book.

Q Are you familiar with the work done by the revisers?

Mr O'Connor: Objected to as calling for a conclusion.

A Yes sir.

Q In what manner is this revision done by the revisers?

Mr O'Connor: Objected to because the question is not limited to the witness' own use, or to the work done by the witness himself and is therefore not limited to his own knowledge.

A The work is started with the revision sheets or reports which are received from the correspondents on the towns and names as shown in the book, and the first name on the revision sheet being the same as in the printed sheet under the town the same as is shown by the blank, the information is then compared with that rating against that name, and con-

tinues if there are more names in a town until they have checked up the work and disposed of the blank and made such corrections, if any, as shown by the information.

Q Now what sources of information are consulted by
1196 the revisers in addition to the revision reports, if you know?

Mr O'Connor: Same objection.

A The files of the office.

Q Containing the sources of information which you have enumerated?

Mr O'Connor: Objected to for the same reasons, and as suggestive and leading.

Q By the way, what is done with these different reports of subscribers that you described, as the same is received? A They are compiled in most cases, and those which are not so compiled are in the records of the office in manuscript form.

Q And kept where? A Kept in the files of the office.

Q About how many of these reports of the different kinds have you now in your possession? A I'd say we had no less than a million.

Q Now going back to the revision work: In cases where the information received on the revision report indicates a very much higher net worth than the rating in your last published book, what is done then in those cases with reference to the red bound book by the revisers, if you know?

Mr O'Connor: Objected to because the witness has already answered the questions, because the question is not limited to what the witness himself did, and is therefore not limited to his own knowledge.

A They would compare information furnished by
1197 their correspondents with the ratings which they might find in the red bound book and then they would make a rating based on the information which they had received from their correspondent.

Q In case there was a great difference in the ratings if any, in the red bound book and the information contained in your revision report, what would they do in that case?

Mr O'Connor: Objected to because the witness has just answered that same question, and for the other reason I have stated in the objection to the last question.

A They would first go to the records or files in the office to ascertain if we had any previous information received which would corroborate the correspondent's report, and in a

of Clancy. great many cases they would find in the files the corroboration of the higher information which had been overlooked in the work during the year, and then they would assign a rating as based on the report received from the correspondent; and in event that they did not find in the records such information as would substantiate the report made by the correspondent they would then send for information either by seeking a personal statement from the party or sending to the correspondent again to verify his report, or some other source of information to substantiate his statement.

Q Now then, in cases, if any, where no additional information could be had substantiating the report of your correspondent as given in the revision blank, what, if anything, was done with the rating as it appeared in the previous edi-
1198 tion, if you know?

Mr O'Connor: I object to the question as calling for information which is not shown to be within the knowledge of the witness,—does not call for this witness' own knowledge.

A The rule of the office is to seek substantiation either from rating from our own sources of information or the new information.

Q If neither was obtained was any change made in the rating?

Mr O'Connor: Same objections.

A Very seldom; might possibly give them a higher rating based on the correspondent's report.

Q Under whose supervision and direction is this revision work done? A I don't just understand?

Q I mean as to all of the revision, who has charge of it? A The general work of the revision?

Q General revision work, yes sir. A Why, the raters have.

Q Who has charge of the raters, under whom do they work? A O, they are working under my instructions.

Q Mr Staden? A And Mr Staden, yes sir.

Q Where is this revision done? A Generally in the office of the Lumberman's Credit Association.

Q Mr Clancy, who did the revision work on the January
1902 edition? A Mr Staden, Mr Wheaton and Mr Fuller, and Mr McLean, Mr Howard, Mr Knefler, Mr Wright,
1199 and I did a very small part.

Q What part of the work did Mr Wright do? A Why, he did a part of the work on Virginia and West Virginia.

Q What proportion of it, as to the whole? A Only a very small part as to the whole; his work was not completed and it was finished by Mr. Howard.

Q About what proportion did Mr. McLean do? A Why, I think he did—he did Rhode Island and I think one other small, very small State, very small part of the whole of the work.

Q About how many blanks are sent out for each revision of this book? A Revision blanks? I would say from twelve to fourteen or fifteen thousand.

Q In what manner or to what extent is the balance of the book revised? A The balance of the book is revised by a general information in the shape of reports and changes which come in in the interim of the book, covering all the new reports that have been received in the six months of time.

Q Do you have any other reference books in the office aside from the red bound books? A Yes sir.

Q What ones? A We have the Lyon book, Cozad, we have had the Ely book.

Q Mr. Clancy, about how many special reports from subscribers and correspondents do you receive daily? A Well, I would say in the neighborhood of 75 to 100.

1200 Q Where is this information tabulated or compiled, if at all? A It is compiled by being written up on cards—on tissues and then pasted on cards and placed in our files.

Q What record, if any, is kept of the result, or where is it kept? A It is kept—I don't quite understand your question.

Q Is the information transferred to any other book in the office? A Why, all information which comes to the office during the interim of the time we are revising, is checked up on the office tickler.

Q Daily? A Daily, yes sir.

Q Is that true of those reports, special reports? A Yes sir, all information of that character, travellers' reports, correspondents' reports, subscribers' reports.

Q From whom did the raters receive their instructions for this revision work? A Why, some of them had been employed in the office for a long time, and those who were new on the work received the instructions from me I think.

of Clancy.

Q What were your instructions to the raters with reference to the use of this red bound book?

Mr. O'Connor: Objected to as immaterial.

A Instructions were to use it only for comparison in cases such as have been stated in my testimony.

Q Was any name or rating transferred from these red bound books to the printers copy, to your knowledge? A No sir.

Q What did this red bound book cost you, about, for
1201 each edition?

Mr. O'Connor: Objected to as immaterial.

A About three hundred and—

Q How much for each edition? A Well, there is a little difference in the editions, I think one cost about $165 and the other about $180 something.

Q Do you know Mr Ferguson who testified in this case? A Yes.

Q Did he ever work for your company? A Yes sir, he was employed in our office, yes.

Q What were his special duties during the time he worked for you? A He was to check up the work of the sheet-clerks and see that the ratings which they made in the office tickler coincided with the information received from our correspondents and the information in the files, and that the name was correctly spelled as received from the correspondent, and as to the classification of business.

Q About how many different kinds of blanks do you have for gathering this information, Mr. Clancy? A Why, I'd say we must have at least 15 to 20, I don't know just exactly.

Q About how many names are contained in your book? A There are about 55,000.

Q Did you ever instruct any rater to make any other use of the red bound book than what you stated? A None whatever, no sir.

1202 Q Are reports from correspondents and others sometimes lost or mislaid in your office? A Yes sir, we have cases where reports are mislaid and cannot be found.

Q About what percentage of information or changes would come through the office tickler, Mr. Clancy? A Well, we receive a great deal of information which is placed on the office tickler,—I never looked into the matter to make an estimate of it,—a large amount of information in the way of

changes, new names, new ratings, in the shape of new towns, new information, new dealers.

Q Well, would there be a large number of them? A I say there would be a good many of them, yes sir.

Mr. O'Connor: I object to the answer as not responsive to the question.

Whereupon an adjournment was taken to Saturday December 20, 1902, at 10:30 o'clock A. M.

1203

December 20, 1902.
10:30 o'clock A. M.

Met pursuant to adjournment.
Present as before.

WILLIAM CLANCY.

Cross Examination by Mr. O'Connor.

Q Mr. Clancy, you spoke about the arrangement of the two books, R. G. Dun & Company's book and the Lumbermen's Credit Association's book; they are both arranged according to states, are they not? A Yes, sir.

Q The states are arranged in both in alphabetical order are they not? A I believe so.

Q Will you please look at them and see? A That is my understanding.

Q And in both under each state the towns in that state are arranged alphabetically, in alphabetical order, are they not? A Yes, sir.

Q And under the name of each town in both, the names of the persons who are rated are arranged in alphabetical order, are they not? A The parties that are covered by each book, yes, sir.

Q The parties who are rated or mentioned in the book? A Yes.

Q And in both books after each name is given what you call the classification, or the line of business in which
1204 the person is engaged is it not? A No, sir, not in both books in all cases.

Q Is it not generally so? A Generally so.

Q What are the exceptional cases? A Why, there are cases where—

Mr. Pease: Just a minute now, look at the Dun book.

A There are cases where concerns—

Mr. Pease: Wait a minute. All right, go ahead.

A There are cases where concerns operating under certain styles are not given a classification. If the style under which they are operating possibly indicates the character of their business, then the classification of business is not given. For instance, in a case like, we will say, the Alabama Lumber Company. In the cases of that character I don't think they are given any classification.

Q R. G. Dun & Company? A No, I think not.

Q Can you find an instance of that kind in their book now before you?

Mr. Pease: Look at that Alabama Lumber Company, is there such a thing?

A Give me that list of seventy-three names. Wait a minute, I think I can find one for you. Here is one right here (indicating).

Mr. Pease: Read it.

A "Matt Schnaible Grain Company", and you will find others of the same kind through the book.

1205 Q That is where the line of business is indicated by the name they don't report the classification,—they don't give the trade in connection with the name? A Well, it is hard to tell whether that would be clear or not. Now here is another one on the same page, "Seger Transfer and Livery Company". No classification is given.

Mr. Pease: Referring to page what?

A Page 34, of Indiana.

Mr. Pease: "Complainant's Exhibit, Complainant's July 1901 copyright reference book."

Q And in both books wherever any ratings are given they are given after the names? A Yes, sir.

Q Did I understand you to say that one of the points of difference between your book, or rather, the book of the Lumbermen's Credit Association and R. G. Dun & Company's book was that in R. G. Dun & Company's book a man engaged in the lumber trade, the classification was given as "lumber" only, while in your book you specified the kind of lumber, whether hard wood, or yellow pine, in which he was engaged?

Mr. Pease: I object to the question as not proper cross-examination, for the reason that the record shows what the

witness testified to, and counsel's understanding of the testimony is immaterial. Dep W

A I spoke particularly about the parties who were manufacturers showing the character or kind of lumber they manufactured, and that in other cases where they are shown
1206 as handling other kinds of lumber, where in the Dun book there are cases that they simply say "lumber".

Q Let us open your book— A And then I spoke about our retail lumber dealers being classified as "lumber". Where they are not classified as "lumber" and don't show the character of the lumber sold the understanding is that they are pine lumber dealers. Where it is wholesale or manufacturers.

Q Opening your book anywhere I notice the word "lumber" only after a great many names. A Yes, sir, that refers to retail pine lumber dealers.

Q Is there anything in your book to indicate that in such cases the party is engaged only in pine lumber? A The abbreviation "lumber" by our key shows that they are simply lumber dealers.

Q Here is the word "lumber" that would simply indicate that he is a lumber dealer generally, wouldn't it? A It indicates that there is lumber, yes, sir, but—

Q I notice among these abbreviations "H. W. L." for hard wood lumber; where the party is engaged in hard wood lumber only you use the initials "H. W. L." do you? A Yes, sir, if he is strictly a hard wood lumber dealer.

Q Under the town of Zero, in Mississippi, in your book of January, 1901, I notice after the name Bostick T. J. & Sons, Mfrs. lumber, what does that mean? A That means that they are manufacturers of pine lumber.

1207 Q How is your customer to know whether they are manufacturers of pine lumber or not, is there anything in your book to indicate that in such a case the word "lumber" is limited to pine lumber? A No, there is nothing in our key to indicate that.

Q The same would be said of the next name, Usher, J. B., Mfr. lumber? A Yes, sir, just simply shows they are manufacturers of lumber.

Q In determining whether a party is good or bad pay are you influenced in any degree by the amount of assets or property which he owns? A No, sir.

Q Are there no cases where your information regarding

his habits of pay is of such a character that the capital or amount of property which he owns may have some bearing upon the question whether he is prompt pay or not? A No, sir, that is a distinct rating bearing to nothing but its own rating that is as to what it indicates whether a man is prompt, medium, slow or very slow pay.

Q Who are your correspondents? A Who are our correspondents?

Q Yes. A Attorneys, banks, Justices of the Peace, Post Masters.

Q What arrangement have you with them? A Subscribers.

Q Those are the persons to whom you referred when you spoke of correspondents? A Yes, sir.

1208 Q What arrangement have you with them in regard to the furnishing of information? A What arrangement?

Q Yes. A Why the arrangement is that their name will appear in our book if they furnish us with special reports, detail reports on parties we inquire about.

Q You don't pay them any salary? A In some cases yes, in some cases no.

Q How many are in your employ on salary? A I couldn't tell you, Mr. O'Connor.

Q Can't you give us some idea of the number? A No, I couldn't.

Q In what form is the salary paid? A Well, it is paid in the way of so much a report.

Q They furnish information to you only when you call for it, do they not? A No, sir, they send in voluntary information from time to time.

Q But they don't send information to you at regular periods do they? A Special regular periods?

Q Yes. A No, only from time to time as the case makes it necessary for them to do so.

Q You have no offices located in other cities, have you? A Yes, sir.

Q What other cities? A New York.

Q Any other city? A Not directly, no, sir, not that we call our own. We have agencies that are associated in

1209 a way with us and looking after our interests and reporting for us regularly.

Q What agencies? A Why, we have one at Grand Rapids, we have one at Detroit.

Q What Agency is at— A I think it is called the Commercial Credit Company.

Q —at Grand Rapids? A In both of those places, and we have agencies at Baltimore.

Q What agencies located there? A I think it is called the Union Credit Company. And Pittsburg, I think the Jones Mercantile Agency. There are others of course, I couldn't call them to mind off hand because I don't come in contact with that part of the work.

Q The clipping bureaus which you mentioned are newspapers to which you subscribe, I suppose? A No, sir, they are regular organized clipping bureaus.

Q What are they? A Why, they furnish—

Q I don't mean to describe what is the character of it, but what are their names? A Well, I can't just say right off hand Mr. O'Connor, I know that they are on our lists and we are paying them regularly from month to month, but I don't charge my mind with the names, and they are changing from time to time.

Q The trade journals that you mentioned are journals to which you subscribe? A Yes, sir, or furnished to
1210 us in the regular way for value received.

Q Who is the Wright that you mentioned? A Mr. Fred. W. Wright.

Q Is he now in the employ of the Lumbermen's Credit Association? A He is.

Q In what capacity? A As a traveling reporter.

Q At the time of the commencement of this suit he was not in the employ of the Lumbermen's Credit Association was he? A No, he was not.

Q When did he return to the employ of the Lumbermen's Credit Association after the commencement of this suit? A I think some time in June, about five or six months after.

Q Who is the McLean that you mentioned? A What do you mean?

Q What is his name? A I don't know his initials.

Q Full name? A Don't know his first name.

Q Where is he now? A I don't know.

Q What is the name of Gilbert whom you mentioned? A I didn't mention Mr. Gilbert.

Q I understood you to mention Mr. Gilbert, I may be mistaken. You do know a Mr. Gilbert who was formerly in the employ of the Lumbermen's Credit Association, do you not? A Yes, sir.

Mr. Pease: Objected to as not cross examination.

Q Do you know where he is now? A No, I do not.

1211 Q Is he connected with the Lumbermen's Credit Association? A No, sir, he is not.

Q Your traveling men solicit subscriptions for your book, do they not? A Yes, sir.

Q That is their principal duty is it not? A No, sir, it is not.

Q Do they not devote a great deal of their time to the soliciting of subscriptions for the book? A They devote a part of their time.

Q How much of their time? A I would say it would be rather a small part of it, because they have more work to do in the line of revising than they would have people to call on whom they wanted to secure subscriptions from.

Q How many traveling men are now in your employ? A Two regular traveling men.

Q You said that Thorbus & Company made up your red bound book, did you not? That is my understanding that they did, yes, sir.

Q When did they begin to make it up, that is, when did they make up the first red bound book for you? A I couldn't tell you.

Q Who made the arrangement with them? A That I couldn't say.

Q Did you ever meet Mr. Thorbus yourself? A I think I have, yes, sir.

Q In connection with that work? A I don't know

1212 positively it was in connection with that work, it probably had—he was in the office at the time, probably.

Q Who was in the office at the time? A Mr. Thorbus, that is the only place I have met him before the commencement of this suit.

Q In what office? A In our office.

Q Who had charge of that work in your office, the employment of Thorbus & Company to do that work? A Why, I suppose that I would be conferred with in regard to it before any was made.

Q Were you conferred with in regard to it? A I probably was.

Q Now I ask you, when did Thorbus & Company begin to do that kind of work for you? A Well, I can't answer positively Mr. O'Connor, I don't remember.

Q Before they began to do that kind of work for you, who did it for you? A I think we had some of that work done by employes or outside help.

Q Your own employes? A Yes, I think some of our employes at times have done some work of that kind.

Q Then it was done in your own office, was it? A Why it may have been, some of it, I couldn't speak positively on that Mr. O'Connor, I think though, that the larger part of it was probably done outside of the office.

Q Well, who did the portion of it done outside of the
1213 office? A Well, I don't think I ever come in contact with anybody that did the work outside of the office unless it might be Mrs. Wright, and I didn't come in contact with her in connection with that work.

Q The wife of Fred Wright? A Yes.

Q Before Thorbus & Company made up the red bound book for you, the red bound book was made up in the same way, that is, the additional names and ratings were taken from R. G. Dun & Company's book and Bradstreet's book in the same way as Thorbus & Company took them from those books? A There were books of that kind made up, yes, sir.

Q Has the Lumbermen's Credit Association ever been a subscriber of R. G. Dun & Company's book? A No, sir.

Q Or of Bradstreet's book? A No, sir.

Q Where did it obtain R. G. Dun & Company's book for the purpose of making up the red bound books before Thorbus & Company began to make up the Red Bound book for them?

Mr. Pease: Objected to; this is not cross examination, and immaterial, it having been gone over fully in Mr. Clancy's direct examination when called as a witness on behalf of the complainant in this case.

A I think part of the time from a man by the name of Gamet.

Q Who was Gamet? A I don't understand your question.

Q Who was he in what business was he engaged, and
where was his office? A He had his office in the Tacoma
1214 Building.

Q In the same building in which the office of the Lumbermen's Credit Association was? A Yes, sir.

Q In what business was he engaged? A Why, I think

of Clancy.

he was in some manufacturing line, I don't know just what kind it was, he told me at times, I think they were manufacturing a pencil, or something of that character.

Q What was the arrangement between you and Gamet in regard to R. G. Dun & Company's book?

Mr. Pease: Objected to as not cross examination, and immaterial, and advise the witness he needn't answer.

Q That was a private matter between he and I.

Mr. O'Connor: I notify counsel that we will ask the Court to strike out the testimony of Mr. Clancy because he refuses to answer questions.

Q Didn't the Lumbermen's Credit Association bear a part of the expense of Gamet's subscription to the book?

Mr. Pease: Same objection, and for the further reason it relates to a time prior to the books in question in this suit.

Mr. O'Connor: It relates to the January, 1901, edition, as well as prior editions.

A That was a private matter between Mr. Gamet and myself. Mr. Gamet is now dead.

Q Did Mr. Gamet himself do any of the work on the 1215 red bound book for you?

Mr. Pease: Objected to as not cross examination, and immaterial.

A I don't remember that he ever did.

Q He merely furnished the book to you, did he? A He furnished us the book, yes, sir.

Q After you obtained the book from him what did you do with it?

Mr. Pease: Same objection.

A Well, I can't just tell you now what we did with it. I told you that we had the work done by different parties.

Q What work done? A How or when or who did it just at the time, I couldn't tell you unless you are more specific as to time. I might be able to answer some of your questions if you were specific as to time.

Q Well, let us take the January, 1901 edition of your book. A I think possibly Mr. Gamet furnished us that book.

Q What edition of R. G. Dun & Company's book was used in the preparation of the red bound book for your January, 1901 edition?

Mr. Pease: Same objection, not cross examination and does not refer to any book or issue involved in this case.

A It would probably be the September, 1900, book.

Q After you obtained that book from Gamet, what
1216 did you do with it? A I don't remember that I did anything with it.

Q What did the Lumbermen's Credit Association do with it?

Mr. Pease: Same objections each time.

A Far as my knowledge goes the book was prepared in states.

Q Taken apart? A Yes, sir.

Q And how was it prepared in states? A Why, one state would be bound in a manila cover.

Q Who took it apart and bound it for you? A That I don't know.

Q Didn't Volkert do it? A I don't know whether he did or not.

Q Didn't he do all of that sort of work for your concern? A Not that I know of, no, sir.

Q You had nothing to do with that part of the work? A I had no personal supervision of it, no, sir.

Q Didn't you know that Volkert was working for the Lumbermen's Credit Association? A I didn't know it until you spoke of it.

Q In this case? A In this case, yes, sir. I remembered it after you spoke of him then.

Q Who attends to that part of your business? A Why, Mr. Stadden probably had more to do with that than I.

Q After the book was taken apart and bound in manila covers in sections, by states, what was done with the different sections?

1217 Mr. Pease: Same objection to each of these questions.

Mr. O'Connor: Make your objection each time.

Mr. Pease: All right.

A I don't know.

Q You had nothing to do with the parts after R. G. Dun & Company's book was taken apart?

Mr. Pease: Same objection.

A No, sir.

Q You don't know what was done with them—

Mr. Pease: Same objection.

Q —do I understand you? A No, sir.

of Clancy.

Q They were then given, were they not, to the persons who made the red bound book?

Mr. Pease: Same objection.

A I don't know anything about that.

Q Who attended to that part of your business? A I can't tell you.

Q Don't you know who had charge of the making up of the red bound book? A Mr. Stadden would have somewhat to do with it.

Q You, yourself, had nothing to do with it? A Not specially, no sir.

Q I notice that you emphasize the word "specially"; what connection did you have with it? A Mr. Stadden might have spoken to me or said something about the matter directly, of course I couldn't say. I had absolutely
1218 nothing whatever to do with the work.

Q Then he might have consulted you from time to time in regard to it? A He might have said something to me about it, yes, and yet I wouldn't have charge of the work.

Q Well, can't you tell us who made up the red bound book before Thorbus & Company made it up for you? A No, sir, I don't know.

Q All you can say is that it was made up by employes, is it? A Well, I don't know as I could even say that, made up by employes, probably people hired to do it, they might not be termed employes of the office.

Q By "persons hired to do it" you mean such persons as Mrs. Wright? A Yes.

Q You say that R. G. Dun & Company's September edition, 1900, was used in making up the red bound book for the January, 1901 edition: what edition of R. G. Dun & Company's book was used in making up the red bound book for your July, 1901 edition?

Mr. Pease: Objected to for the reason that it refers to a book not in issue in this case.

A It was probably the March, 1901 edition.

Q And what edition of R. G. Dun & Company's book was used in the preparation of your red bound book for your January, 1902 edition? A Well, I don't know in re-
1219 gard to any of these things, I am not speaking positively at all, I don't know, I couldn't tell you what book was used; it might have been some old book far as my knowledge goes.

Q You don't know? A No, sir.

Q Of your own knowledge? A Of my own knowledge, about any of these books.

Q Thorbus & Company did the work? A I don't know that they did.

Q You employed them to do the work, did you not? A Yes, sir.

Q On the red bound book, for January, 1902? A Yes, sir, I believe they were employed by the Association.

Q Did the Association employ them to do the work on the red bound book for your July, 1901 edition? A I think they did the work on the red bound book.

Q Did they do any work for the Association on the red bound book for your January, 1901 edition? A I can't say.

Q Where is the red bound book of your January, 1902, edition? A In our office.

Q Where is the red bound book of your July, 1901, edition? A I don't know.

Q Have you or has the Lumbermen's Credit Association any red bound book of the January, 1902 edition? A None that I know of.

Q What has become of them? A I don't know; they 1220 probably have been destroyed.

Q When were they destroyed? A That I can't tell; had nothing to do with that part of the work.

Q Has it been your custom to destroy them from year to year? A I think so.

Q I am asking you about your knowledge, whether you know that it has been your custom to destroy them from year to year? A I don't know positively, no, sir.

Q Weren't those red bound books or some of them in existence at the time of the taking of testimony in this case before Master Bishop? A I don't remember whether they were or not.

Mr. Pease: The January, 1902 books were.

Mr. O'Connor: I refer to the red bound books prior to the red bound book of January, 1902.

Q Were not some of those books in existence at that time? A Not that I know of.

Q The red bound book, as I understand you, contained ratings taken from R. G. Dun & Company's book and from Bradstreet's book, did it not? A The red bound book of January, 1902?

n of
Clancy.

Q All of the red bound books? A So far as I know it contained ratings transferred from the Bradstreet and Dun books, yes, sir.

Q You say that they contained also some new names? A Yes, sir.

1221 Q What new names? A New names from the same sources.

Q That is, names appearing in those two books and not appearing in the last edition of the Lumbermen's Credit Association? A Yes, sir.

Q Did they contain the names of new towns? A I think they did.

Q What new towns? A Why, such towns as were not shown by the printed sheet in the red bound book.

Q That is, the last edition of the Lumbermen's Credit Association's book? A Yes, sir.

Q What was done with those new names appearing in the red bound book? A We sent to our correspondents to ascertain if they were in business, if so, what line of business they were engaged in.

Q Just a moment, please; what did the raters do with them?

Mr. Pease: Did you finish your answer?

A And what their financial worth or reputed worth was.

Q Mr. Clancy, I want you to answer my question please, then Mr. Pease can examine. What was done with the red bound book after it was made out? A Which, the names and—

Q With the book, Mr. Clancy, what was done with the red bound book after it was made up, after it was completed? A Why, it was placed in our office.

Q What was done with it after it was placed in your office? A In doing the revision work the new names under new towns were sent to our correspondents—

1222 Q That isn't the question I am asking you. What was done with the book, was it taken apart, the red bound book? A No, sir.

Q Was it bound in one volume? A No, sir.

Q It was bound in different parts, was it not? A Bound in states.

Q Bound in states? A Yes, sir.

Q That is what I want to get at. It was always made out in sections was it not, the red bound book? A Yes, sir.

Q By states? A Yes, sir.

Q And when a rater was revising a state the corresponding state of the red bound book was handed to him, was it not? A Why, he might have had it, I don't know as it was handed to him.

Q Well, did he use it in his work at all? A Why, he may have used it in connection with his work.

Q How did he get it? A He took it from the table where the red bound books would be.

Q It was put there for that purpose, was it not? A Put there for the work of the rater and the sending for information on the new names.

Q On special inquiries? A Special names. No, sir not special inquiries.

Q What do you mean? A On the new names contained in that book.

1223 Q Well, what did the rater— A The rater had nothing to do with the book until the names had been sent to our correspondents and information secured in regard to them as to what they were worth and what line of business they were in and whether or no they were in business.

Q Did the raters do any of that work? A They may have done some on their own account, but not generally, no, sir.

Q Then before those books were handed to the raters you had written to your correspondents and obtained information from them regarding the new names appearing in the red bound book, had you? A Yes, sir.

Q So that the raters had nothing whatever to do with the obtaining of information regarding those new names? A Why, in cases where the information hadn't been received in the general revision work they might possibly have taken up such cases and investigated for themselves to know whether they should go in the book.

Q But all of that work regarding the obtaining of information about the new names, was supposed to be done before the red bound book was given to the raters, was it? A Generally so.

Mr. Pease: What was that question?

Question read.

Mr. Pease: You don't mean it just that way.

of Chancy.

Mr. O'Connor: Put down Mr. Pease's remark, and in-
1224 sert my objection.

Mr. Pease: Yes, put it down. Information was sent for, it isn't always obtained. You seem particularly anxious to deceive the witness as to what—

Mr. O'Connor: I object to interruptions of counsel.

Mr. Pease: —as to the meaning and form of your questions. He has told you what he did.

Q After the information was obtained regarding the new names, the red bound book or such parts of it as covered the states to be revised by the rater were handed to him, were they? A No, sir.

Q What? A No, sir, they were not handed to him.

Q Well, he got them, did he? A He had access to them if he wanted them, yes, sir.

Q Well, he took them, didn't he? He was supposed to take them, was he not? A He was supposed to use them if he had any occasion in the regular way.

Q Now in what way did he use them? A He used them for comparison and in instances where they might—the information might not have been received through the regular revision work, he may in some of those cases taken up the matter independently himself to ascertain whether the names should appear in the book, in our regular book, or printer's copy.

Q Please tell us just what use the rater made of the
1225 red bound book? A He used it in making comparison in connection with names where the reports received were in great variance from the previous rating in our book which was then the printer's copy, in that case he would make comparison to see if this information was the same, and—

Q The same as what? A The same; might compare with the information he had received from his correspondent.

Q See if what information would compare with the information received from the correspondent? A The worth—

Q The ratings of R. G. Dun & Company and Bradstreet? A The worth of the party as shown by the report received from the correspondent, and the ratings as shown by Bradstreet and Dun in the red bound book.

Q How would he make the comparison? A By simply looking at the ratings.

Q Well, if he found that R. G. Dun & Company's and Bradstreet's ratings corresponded with the information re-

ceived from your correspondents, what did he do? A He would go to his files to ascertain if we had any corroborative information in our files to substantiate the report received from his correspondent and he would make a rating.

Q Would he do that before or after he had examined R. G. Dun & Company's ratings and Bradstreet's ratings? A That I couldn't tell you, he might do it before or after.

1226 Q Well, if he didn't find any corroborative proof? A Why, he would base the rating on the correspondent's report as received.

Q If R. G. Dun & Company's and Bradstreet's ratings didn't correspond with the information received from your correspondent what would he do? A He would always rely on his correspondent's report and make his ratings according to that information.

Q Suppose there was only a slight difference between the information received from your correspondent and R. G. Dun & Company's ratings and Bradstreet's ratings? A He would rely on his report from the correspondent and base his rating on that.

Q Suppose that one of the two ratings, R. G. Dun & Company's rating or Bradstreet's rating agreed with your correspondent's rating, and the other differed from your correspondent's rating, what would the rater do? A Depends on his information received from his correspondent entirely. His instructions are to use his own information,—

Q I just ask what he did.

Mr. O'Connor: I object and ask that the witness' answer relating to instructions be stricken out as not responsive.

A —And not rely on the ratings from the red bound book, because it was generally known in our office that we

1227 can't rely on them, there is so many cases where parties are erroneously reported,—

Mr. O'Connor: Mr. Clancy, you are volunteering a lot of information that my question doesn't call for.

A —that we didn't look upon them as being entirely reliable.

Mr. O'Connor: I ask you to note that the witness refused to stop when counsel asked him to stop.

Q Who gave those instructions to the raters? A In the first place they were instructed either by me or Mr. Stadden.

Q Then you did give instructions to the raters in regard

f
ancy.

to their work did you? A When they first started in on rating, yes, sir, if they hadn't had any previous instructions.

Q You explained to them how they were to use the red bound book, did you? A Yes, sir.

Q And what use they were to make of R. G. Dun & Company's ratings and Bradstreet's ratings? A What use they were to make of the red bound book.

Q Did you instruct them as to what use they were to make of R. G. Dun & Company's ratings and Bradstreet's ratings in the red bound book? A Yes, sir.

Q When you gave those instructions, did you instruct them how to use or interpret the ratings of R. G. Dun &
1228 Company and Bradstreet? A They had a key which would indicate.

Q What kind of a key? A Why, it was a key that was made on tissue and pasted on manila sheets, parties who were not familiar with the ratings had such keys.

Q They were copies of the keys of R. G. Dun & Company and Bradstreet were they? A Well, I think they were not exact copies, from the testimony I heard yesterday.

Q Well, you intended them as copies, did you not?

Mr. Pease: Object to what the intention was.

Q You supposed they were copies, did you not? A Yes, sir.

Q Where did you obtain them? A That I couldn't say.

Q Who made them? A That I couldn't say.

Q They were made in your office were they not? A I think so.

Q From what were they copied? A They were actually copied, probably, from the key of the agency.

Q What agency? A Bradstreet and Dun's.

Q Where were the keys obtained from which they were copied? A I suppose from the book.

Q In the front part of the book? A Or books, rather.

Q Those ratings in the red bound book were the latest ratings of R. G. Dun & Company and Bradstreet, were they not? A I don't know.

1229 Q They were supposed to be, were they not? A Supposed to be, yes, sir.

Q What instructions did you give to the raters in regard to the use they were to make of R. G. Dun & Company's ratings and Bradstreet's ratings in the red bound book? A Instructions were to use them as comparison in cases such as I have testified to.

Q What cases, please tell us. A Cases where the information received from our correspondent indicated an abnormal change in the financial standing. Depos Wil

Q What do you mean by abnormal change? A The information indicating a rating so much higher than previously assigned in our last edition of our book, which rating was in the printer's copy on which the man was working.

Q How much higher? A O, in cases where it would be probably double or more.

Q Were those the instructions, that they were to use the book only in cases where the rating of a party was double his former rating, according to the latest information? A Yes, sir, and cases where they found that information hadn't been received on new names they were to see to it that the corresponding department or themselves tried to secure the information or secured the information, rather, from the correspondent.

1230 Q Have you, yourself done any rating? A Yes, sir.

Q Recently? A Very small part of the January, 1902, book, yes, sir.

Q You have been in the habit of doing a part of the rating on each edition, have you? A Generally so, yes, sir.

Q You say that you have a large number of reports on file? A Yes, sir, at least a million.

Q The Lumbermen's Credit Association preserves all its reports, does it? A Not all of them, no, sir.

Q Does it preserve only a part of them? A Why, we compile the information as it comes into the office and it is placed in the files for the general work of the office or the manuscript work and such reports and such reports, which I take it is the question you ask, may not be preserved after we consider that the original is in the file from the copy of the information received from the correspondent.

Q That is after you have compiled reports you preserve the substance of them, do you? A Yes, sir, we aim to.

Q These reports that are on file in your office extend over what period of time? A That question I couldn't answer.

Q Have you been preserving the reports since you commenced business? A Why, the old reports will be revised and new reports up to later dates made out and the old information will be thrown away. In cases of that kind we

1231 strike out our old data and revise our report and bring it up to date so as to not have too much old stuff in our

ancy.

files, bring it up to a later date, that has been our intention. In some cases we might have information there for twenty-five years, and in other cases where a man had been in business ten or fifteen years the old data might not be there. All condensed into a later report. By condensed into a later report I would mean, adding the new information.

Q Preserving the substance of the old, and adding new information? A And adding new, yes, which would corroborate the old.

Q When was Mr. Ferguson in the employ of the Lumbermen's Credit Association? A Can't tell you exactly the dates, Mr. O'Connor.

Q On what edition of your work did he work as a rater? A I think he did some work on our Jul, 1901, book.

Q What states did he revise? A I couldn't tell you.

Q What raters worked on your July, 1901, edition? A Mr. Wheaton, Mr. Stadden, Mr. Wright, and I did some of the work myself.

Mr. Pease: Ferguson did?

Q And Ferguson? A You want me to say Mr. Ferguson?

Q Yes, certainly. A O, I supposed you excluded him.

Q How long did Ferguson work on that edition as a rater? A He worked in the neighborhood of three or four months I think, and he was doing—

1232 Q You mean altogether, or as a rater on that particular edition? A Why, on that particular edition he was doing rating work or checking up rating work all the time—part of the work he was doing all the time he was there.

Q I refer to the rating which he did in the revision of the July, 1901— A I will say he was working three or four months on it.

Q Then when you testified yesterday that it was his duty to see that these classifications and ratings on the tickler corresponded with the information on file, you didn't mean to deny that he worked as a rater on the revision of the July, 1901 edition of your book? A No, sir, I was referring to one of his duties in the office in connection with that.

Q Have you ever counted the number of names in your book? A I have estimated the number of names in our book, yes, sir.

Q In what way? A By taking a certain number of pages scattered in different parts of a state, and counting the num-

ber of names as shown on each page, and then adding up the amount and dividing the amount. My estimate agreed with yours with the exception of about 200.

Q Have you ever counted the number of changes in any edition? A I think not, no, sir.

Q Look at the affidavit which I now show to you Mr.
1233 Clancy, and state whether that is your signature attached to it? A Yes, sir, that is my signature.

Q You swore to this affidavit, did you? A Yes, sir, I believe I did.

Mr. O'Connor: We offer this affidavit in evidence in connection with the cross examination, marked for identification, December 20, 1902.

Mr. Pease: Objected to as immaterial.

A Am I at liberty to make a statement here?

Mr. Pease: I will give you a chance later.

Re-direct Examination by Mr. Pease.

Q What statement do you want to make? A I wanted to make a statement in regard to my affidavit. In the affidavit I stated that we sent out I believe, at least thirty or forty thousand inquiries in relation to the ratings connected with the book, and it might be construed from my testimony that the amount of revision blanks which I spoke of constituted the whole amount and it does not. We have at least thirty to forty thousand blanks sent out for information, and letters and communications of all kinds to fully that extent.

Q Between each revision? A Between each revision, which all relates to the ratings in connection with the book.

1234 Q You mean in connection with the revision,—with each revision? A In connection with the ratings in the books, yes, sir.

Q When you speak of re-writing old reports and including new matter, you mean revising instead of condensing reports, don't you? A Revision, yes, sir, adding such information as is important that is in the files to the new information which is received and bringing it down to date.

Q You meant revised instead of condensed? A Well, it would be—

Q Both? A Both. There would be some information, some wording was not important which might be eliminated

from the new report which did not act in any way to affect the financial standing of a concern.

Q What is the duty of your travelers in connection with or in regard to gathering information as to the financial worth and habit of pay?

Mr O'Connor: Objected to because it has been gone over.

A Their duties are to secure information as to the financial standing of the parties, and investigate at the banks and merchants in town as to the habit of pay.

Q And what do they do with reference to reporting that to the office? A Such information is reduced to writing and sent to the office.

Q What is the duty of your correspondents in revising towns and cities with reference to changes from time to
1235 time affecting the financial standing or the habit of pay of lumber dealers and others? A Information—all instructions are to furnish us such information from time to time as the opportunity offers itself, and we receive such information daily.

Q There have been no red bound books or other original sources of information destroyed since this suit was begun, has there?

Mr. O'Connor: Object to the question as leading.

A No, sir, not that I know of.

Q What was the duty of the raters with reference to securing information on new names in case the revision report had not been received up to the time that they were working on the revision of any particular state or town?

Mr. O'Connor: Objected to as immaterial and calling for a mere conclusion.

A They were expected to follow it up by sending financial statement, or sending to another correspondent and in no case to use any new name unless they had information from their correspondent.

Q What do you mean by financial statement? A Well, to send direct to the parties themselves, asking them to give us a statement of their financial standing in detail, covering all their assets and liabilities, and so on.

Q Did they do this?

Mr. O'Connor: Objected to because the witness is not
1236 shown to have known what they may have done.

A Yes, sir.

Q Under what circumstances did Mr. Wright return to the

employment of the Lumbermen's Credit Association in June or July last?

Mr. O'Connor: Objected to as immaterial.

A Why, he came to our office and stated to me that he had—

Mr. O'Connor: I object to any statement made by Mr. Wright to Mr. Clancy in the absence of the complainant or any one representing the complainant.

A —stated to me that he had made a mistake and had been deceived by the Foster Agency in the making of an affidavit which is filed in this case, and that—

Mr. O'Connor: Then why isn't Wright produced to contradict this affidavit, if he dares to do it.

A —and that the names which were used in the cases were the names which Mr. Fish used as a canvassing document against our Association, and he said he had found he was among a lot of people that he didn't care to be associated with, and would like to know if there was any opportunity of his returning to our employ; very sorry for the statement he had made in regard to me and was willing to show us he merited my confidence again if I would consider him.

Q What names did he refer to?

Mr. O'Connor: Same objections, immaterial and incompetent.

1237 A He referred to the list of names filed by Mr. Prudence in his affidavit.

Q You said something about inserting the name of correspondents in your book in connection with their services in forwarding information. A That is a part of the arrangement that we will insert their names and at the same time, send them any legal business which comes into our hands for attention. That is a part of the compensation which they receive for making these reports, and in many cases they receive business from our subscribers who are using our book, and their name appearing in it—

Q In what manner does their name appear? A It appears as our legal representative under the town in which they reside.

Q What if any other work did Mr. Ferguson do at the time he was working on the revision of the July, 1901 book?

Mr. O'Connor: Objected to as immaterial and because it is going over the same ground a second time.

A He was checking up new names, classification of busi-

f ancy. ness and ratings which were assigned by raters in the office tickler.

Q With what?

Mr. O'Connor: Same objections.

A With information received from correspondents in the shape of personal reports, also financial statements received from parties direct, delinquent reports received, 1238 tracer reports.

Q With your information in your office? A General information that is received, specially, and the files also.

Re-cross Examination by Mr. O'Connor.

Q When did Wright call upon you and ask you to take him back into your service? A I don't remember the date Mr. O'Connor, it was some time I think in the early part of June.

Q Where was it, in your office? A Yes, sir, in our office.

Q Did you employ him in that interview? A No, sir, I think not.

Q How often did you see him before you employed him? A Why, the matter was talked over, I saw him, I think twice, once in the office and once at lunch.

Q The second time you came to terms, did you? A I believe so; I believe the contract was determined then.

Q What was his salary before he left your service? A I think it was $19.65, something like that.

Q A week? A Yes, sir.

Q What is it now? A $20.

Q The first of these interviews was the first communication direct or indirect, that you had had with him, was it, since he left your employ before the commencement of this 1239 suit? A I think he had seen Mr. Stadden once, that is all.

Q When had he seen Mr. Stadden? A I can't tell you, I don't recollect.

Q You don't know whether he went to see Mr. Stadden, or Mr. Stadden went to see him? A I think—

Q Not what you think, but do you know? A Well, I can't say positively.

Q Wright referred in this interview to the affidavit which he made in this case, did he? A Yes, sir.

Q That is the affidavit which the complainant filed in this case, is it? A I believe so, yes, sir.

Q The affidavit of Fred Wright? A Yes.

Mr. O'Connor: Have you that affidavit?

Mr. Pease: No.

Mr. O'Connor: We offer that affidavit in evidence and ask the reporter to mark it for identification.

Affidavit marked "For Identification, December 20, 1902."

Mr. Pease: Objected to as immaterial, incompetent and irrelevant.

Whereupon the taking of further testimony was adjourned to Tuesday, December 23, 1902, at 10 o'clock A. M.

1240 December 29, 1902.
10 o'clock A. M.

Met pursuant to agreement.

Present, as before.

BURTON W. STADDEN, called as a witness on behalf of defendants, being first duly sworn, testified as follows:

Deposit Burt Stad

Direct Examination by Mr. Pease.

Q Please state your name? A Burton W. Stadden.

Q What if any position do you hold in the defendant company? A I am Assistant Manager of the Lumbermen's Credit Association.

Q Also Secretary, aren't you? A Also Secretary of the corporation.

Q How long have you been Secretary? A Since it was organized, in 1893.

Q How long have you been connected with the business now conducted by the Lumbermen's Credit Association? A Fifteen and a half years.

Q Under what name was that business carried on prior to the organization of the Lumbermen's Credit Association? A The Lumber Mercantile Association.

Q By whom was the Lumber Mercantile Association
1241 conducted? A By William Clancy.

Q What business is the Lumbermen's Credit Association engaged in? A Engaged in the gathering of information regarding the lumber and kindred trades for the purpose of publishing a reference book; and for the further purpose of furnishing its members with detailed information on their customers.

Q As to what? A As to their financial standing and the manner in which they meet their obligations and are in the habit of treating the shippers.

Q In what manner is this information gathered? A It is gathered by obtaining reports direct from the correspondents of the Association located in the various cities and towns, also by obtaining personal statements from the dealers, manufacturers, regarding their financial standing; also obtaining information from the trade from whom they make their purchases in reference to the manner in which they meet their obligations and the manner in which they treat their creditors.

Q In how many or what towns and cities has the Lumbermen's Credit Association correspondents? A In all of the towns and cities covered by its reference book.

Q And what territory is covered by its reference book?

Mr. O'Connor: Objected to; the reference book will
1242 speak for itself and is the best evidence of its contents.

A Covers the United States and Mexico.

Q How long has this Lumbermen's Credit Association and its predecessor been gathering information in this manner? A For twenty-six years.

Q About how many different forms of blanks are used by the Association in connection with the gathering of information by its correspondents and others, and its work generally? A O, in the neighborhood of twenty blanks I should say.

Q Have you a sample or form of such blanks with you? A I have.

Mr. Pease: You wish to look at these, Mr. O'Connor?

Mr. O'Connor: Yes.

Mr. Pease: I want to offer them after you—(indicating blanks).

Q What other original sources of information, if any, does the Lumbermen's Credit Association secure aside from those mentioned? A In addition to those mentioned it uses five clipping bureaus from whom a great deal of information is received; also a large number of trade papers, possibly twelve or fifteen different publications; also the collection department; considerable information from banks, and in addition to the parties that are being investigated constantly, we receive a great deal of voluntary information from our subscribers regarding their experience with their customers.

1243 Q Do you recall others, other sources? A We have what is called a weekly report from our members, and

delinquent reports, law bulletins, and special trade agencies from whom we receive a great deal of information. And there may be some other sources that don't occur to me now.

Q How about the traveling men? A We have travelers who send in a great deal of information and who revise our information on each town and city that they visit. That is, they take our last printed list and go over it carefully, correct it and add to it any names that are not carried already, also making investigation regarding new names and giving them such rating as they are entitled to.

Q What if any other lists are used? A We also have the lists furnished us by the retail lumber dealers' associations of the various states.

Q What others? A I don't recall just now.

Q How about country yard lists? A Yes, we have country yard lists. Those consist of lists furnished by the concerns who operate what is known as country yards, that is, a concern operating a number of yards at different points, those lists are furnished regularly, also showing what office makes the purchases for those yards, and if the yards make their own purchases that information is furnished and used in compiling the reference book.

Q What if any railroad lists are used?

1244 Mr. O'Connor: Objected to as leading.

A The railroad companies furnish us with lists of lumber yards and manufacturers located on their line which lists are made use of in compiling the book.

Q What if any references are included in the personal statements? A Well, I covered that on the first question. If references are given in the personal statement we write the references and get their information regarding their experience with their customer.

Q In what manner are the reports furnished to the reporting department by your collection department? A The collection department makes a written report on every claim collected, settled in any way, or returned to our clients by showing in the report the date upon which the claim was received by the department, the amount of the claim, when due, whether it is settled in the regular way, whether by suit, the entering of judgment, collected by execution, whether it is compromised, or if returned to our client the reasons for returning it are shown in this report. That information is placed on the cards that refer to the individual from whom the

claim has been collected, placed in our files and used in transmitting information on that individual to our subscribers.

Q How often are these reports made? A Those reports are made daily.

1245 Q To what extent? A Well, they vary, sometimes in a day there will be a dozen of those reports written up to be transferred to the reporting department. Some days there may not be quite so many, other days there would be more.

Q To what extent is information received from the clipping bureaus? A We receive on an average, one hundred items from the clipping bureaus each day. Some days it runs larger than that, but rarely falls below one hundred.

Q What is the cost of this clipping bureau information per month?

Mr. O'Connor: Objected to as immaterial.

Q It amounts to ten dollars a month.

Q By the way, what are your duties, Mr. Stadden? A I am Assistant Manager of the Association, and during Mr. Clancy's absence, in direct charge of the entire business. I am also in charge of the collection department at all times.

Q What if anything have you to do with the regular revision of the reference book? A I have worked on every revision that has been made since I became connected with the Association.

Q And what else if anything in connection with the other raters working on revision? A I have had charge of the raters in connection with Mr. Clancy, and have been familiar at all times with the work done by them.

1246 Q You are also familiar with the work of the office generally, are you not? A Yes, sir, I am in close touch with all the work that is being done there.

Mr. Pease: I will ask the reporter to number these blanks in the order in which they are fastened together, for the purpose of identifying them. I will offer them later.

Blanks marked from 1 to 22, inclusive.

Q Did you mention revision blanks, in your different sources of information? A I didn't mention the revision blank, because I intended to cover that when I said that we obtained information direct from our correspondents.

Q I will ask you to look at the different blanks referred to which have been numbered 1 to 22 respectively, and explain the purpose for which each is used in connection with the business of the association.

Mr. O'Connor: Objected to as immaterial.

A Number 1 is known as our contract with our subscribers. In making the contract with each subscriber it is agreed—

Q Is that the use that is made of the blank? A That is the use.

Q All right, that explains itself. A The number 2 is known as the revision blank.

Q Go ahead, right through. Are they also used for that purpose? A They are used for the purpose of revising
1247 the information contained in the book.

Q In what manner? A By sending a blank to each town and city containing the names of all of the parties carried in the previous book, together with any new names that may appear in our office tickler.

Q To whom are they sent? A Sent to our correspondents.

Q Well now, just explain the use that is made of each of the other blanks? A Number 3 is known as personal correspondent blank. This blank is used when we want a new report in detail either on a party who is already carried in our book, or some new dealer or manufacturer that blank is sent to our correspondent and a request made for a report in detail. Number 4 is known as a town blank. On this town blank we paste the town as it appeared in our last reference book, send it to our correspondent, also in many cases to dealers or manufacturers in the same city or town, asking them to check over the list, make any correction that should be made in either the ratings or the manner of pay, also erasing any names, parties not now engaged in business and adding to the list any new concerns that have been omitted. Number 5 is known as a special correspondent reporting blank to be used with reference to corporations. This blank is used in the same manner that number 3 is, except it is sent out when we desire information on a stock company. Number 6 is known as a personal statement blank. This blank is sent to a party
1248 from whom we desire a personal statement of his financial standing. Number 7 is known as a personal statement blank to be used in securing information from corporations. Number 8 is known as the inquiry ticket. This ticket is used by our members in making request of us for special detailed report on parties whom they are selling or new customers. Number 9 is known as a tracer; this blank goes out with the correction sheet to each member of the association. It contains the names of numerous parties upon whom we desire information.

Q How often? A Those blanks are sent out every other week. Number 10 is a blank used for the purpose of obtaining information on small towns where the correspondent has not replied promptly. We cut out the town, paste it on the blank and send it to one of the dealers and request him to check it over, make such corrections as should be made, and add any information that is not already contained on the blank. Number 11 is known as the correspondent's blank for obtaining information on new corporations. The blank contains the name of a new corporations, is sent to our correspondents and request made to furnish us information in detail on this blank. Number 12 is known as building new mill blank. Where we learn that a new mill is being built at some point we use this blank in obtaining information in detail.

Number 13 is known as a bank reference blank; this
1249 blank is sent to banks who have been referred to or given as reference and request made to furnish information in detail. Number 14 is known as the trade reference blank. This is used in obtaining information from the trade upon references given by the party in making a personal statement. Number 15 is known as the sale or dissolution blank; this blank is sent to correspondent in cases where we have had advice that a concern has sold out, or a dissolution has occurred. Number 16 is known as selling out or dissolution blank to be sent to a party who has sold out asking for particulars. Number 17 is known as a fire blank, to be sent to the party or concern who has been burned out, asking them to give details. Number 18 is known as the fire blank which goes direct to our correspondent asking for the details of a fire. Number 19 is known as the death blank. If we are advised that a party has died we use this blank in sending out to our correspondent for details. Number 20 refers to suits. This blank goes to our correspondent asking for particulars regarding suit brought. Number 21 is known as asssignment or failure blank; used in obtaining information from our correspondent regarding assignments or failures. Number 22 is known as the mortgage or deed blank, for the purpose of obtaining information regarding mortgages and deeds given, from our correspondent.

Mr. Pease: We offer these blanks in evidence as defendant's Exhibits, corresponding with the numbers heretofore placed on each by the reporter, for identification.

Blanks marked Defendants' Exhibit 1 to 22 inclusive,
1250 December 29, 1902.

Mr. O'Connor: Objected to as immaterial.

Q What, if anything, is done with reference to stamped and addressed return envelopes with reference to inquiries for information?

Mr. O'Connor: Objected to as leading and immaterial.

A You mean inquiries that we send out?

Q Yes. A With each inquiry that we send out we enclose a stamped return envelope, the envelope addressed to the Lumbermen's Credit Association.

Q What do these figures, "100 M 10—1901" and other figures in similar position and import appearing at the top of several of these blanks indicate, Mr. Stadden?

Mr. O'Connor: Objected to as immaterial.

A That shows the number of blanks of that particular kind that were printed on that date for our use.

Q I show you two papers headed "tracer" and ask you what they refer to?

Mr. O'Connor: Objected to as immaterial.

Mr. Pease: They are similar blanks to those, Mr. O'Connor, except that they are blanks that are actually in use. Simply shows the use which is made of the blanks, Mr. O'Connor.

A These are tracer blanks that have—

Q Are they blanks or reports? A These are tracer reports that have been received from our members giving information in reference to parties named on these blanks
1251 with whom they have had dealings.

Q State whether or not they are a part of the files of the Lumbermen's Credit Association?

Mr. O'Connor: Objected to as immaterial.

A They are a part of the files of the Lumbermen's Credit Association, and the information contained on them has been transferred to the card file.

Mr. Pease: We offer these in evidence as Defendants' Exhibits 23 and 24 of this date.

Mr. O'Connor: Objected to as immaterial. As I understand, they are offered only for the purpose of showing how the blanks are used?

Mr. Pease: Yes, that is right.

Q I show you another paper headed "Subscriber's weekly report sheet" and ask you where that paper was produced from, if you know?

Mr. O'Connor: Objected to as immaterial.

A This is subscribers' weekly report received from one of our members and is a part of the files of the Lumbermen's Credit Association.

Q Was it taken from the files? A It was taken from the files of the association.

Mr. Pease: We offer this in evidence as Defendants' Exhibit 25.

Mr. O'Connor: Objected to as immaterial.

Q We show you a number of papers known as delin-
1252 quent blanks and ask you to state whether or not they are produced from the files of the Lumbermen's Credit Association?

Mr. O'Connor: Objected to as immaterial.

A They were taken from the files of the Lumbermen's Credit Association.

Q State whether or not they were received in due course of business? A They were received in regular course of business.

Mr. Pease: I offer them in evidence as Defendants' Exhibits 26, 27, 28, 29, 30, 31 and 32.

Mr. O'Connor: Objected to as immaterial.

Q I show you four papers purporting to be clipping bureau reports and ask you to explain what they are.

Mr. O'Connor: Objected to as immaterial.

A These are reports which are received in daily from the press clipping bureau containing information regarding parties engaged in the lumber or kindred trades. This information is a part of the files of the Lumbermen's Credit Association.

Q And where were they taken from? A They were taken from the files of the Association.

Mr. Pease: We offer these in evidence as Defendants' Exhibits 33, 34, 35 and 36.

Mr. O'Connor: Objected to as immaterial.

Q I show you three pamphlets purporting to be issued by the Great Northern Railway, Illinois Central Railroad Com-
pany and the Yazoo and Mississippi Valley Railroad
1253 Company, and the Louisville & Nashville Railroad Company respectively, and ask you to state whether or not they are a part of the railroad lists referred to by you?

Mr. O'Connor: Objected to as immaterial and leading.

A They are part of the railroad lists heretofore referred to, furnished by the railroads named. They are a part of the

files of the Lumbermen's Credit Association, and were taken from its files.

Mr. Pease: I offer these in evidence as Defendants' Exhibits 37, 38 and 39, of this date.

Mr. O'Connor: Objected to as immaterial and incompetent.

Q I show you a number of other pamphlets issued or purporting to be issued by the Southern Railway Company and other railroad companies, also by the Rock Island system, by the New Orleans and Northeastern Railroad Company and others; and also by the St. Louis Southwestern Railway Company and others; and also by the Kansas City Southern Railway Company and others and ask you to state whether or not these are also part of the railway lists referred to by you?

Mr. O'Connor: Objected to as immaterial, and incompetent.

A They are, and—

Q What were they taken from? A And were taken from the files of the Lumbermen's Credit Association.

Mr. Pease: We offer them in evidence as Defendants' Exhibits 40, 41, 42, 43, and 44.

1254 Mr. O'Connor: Objected to as immaterial and incompetent.

Q I also show you a number of communications from the Louisville Henderson St. Louis Railway Company, from the St. Louis Southern Railway Company, from the I. & G. N. Railroad Company, from the Atlantic & Birmingham Railroad Company and ask you where they were taken from, if you know?

Mr. O'Connor: Objected to as immaterial, leading and improper.

A They were taken from the files of the Lumbermen's Credit Association, and are part of the files of that Association.

Q State whether or not they were received in due course of business? A They were received in the regular course of business from the respective railroads named.

Mr. O 'Connor: Did you receive them personally? A In most cases yes, probably in all cases.

Mr. Pease: We offer these in evidence as Defendants' Exhibits 45, 46, 47, 48 and 49, of this date.

Mr. O'Connor: Objected to as imamterial and incompetent.

Q I will ask you whether or not other lists are received by the Association from other railroads?

Mr. O'Connor: Objected to as immaterial and incompetent and leading.

A Other lists are received and have been received.

Q How long have similar lists been received from railroads by the Association?

Mr. O'Connor: Same objection.

1255 A For some years.

Q Well, approximately how many years?

Mr. O'Connor: Same objection.

A I can't recall when we first commenced to—

Q Well, four or five or more years?

Mr. O'Connor: Same objection.

A Well, probably be more than four or five.

Q What is done with these lists, Mr. Stadden, what use is made of them?

Mr. O'Connor: Objected to as immaterial.

A They are checked over with the reference book of the Lumbermen's Credit Association, and if we find there are any towns or dealers at any town or city that we don't carry we investigate the parties, ascertain whether they are still doing business, also obtain a report as to their financial standing, and if they are in business their name is placed in the reference book.

Q I show you two papers purporting to be yard lists and ask you where they were produced from, if you know?

Mr. O'Connor: Objected to as immaterial.

A These lists were taken from the files of the Lumbermen's Credit Association by myself.

Q What revision of the reference book were these lists procured for?

Mr. O'Connor: Same objection.

A These lists were procured for use in the July, 1901
1256 reference book.

Mr. Pease: We offer them in evidence as Defendants' Exhibits 50 and 51 of this date.

Q State whether or not they were received in due course of business? A They were.

A About how many yard lists, reports, similar to these were received for that edition?

Mr. O'Connor: Objected to as immaterial, incompetent and leading.

A The number of lists?

Q Yes, approximately. A O, I should say we had 800 to 1000 of those lists for that edition.

Q How often are they secured?

Mr. O'Connor: Same edition.

A They are secured twice a year.

Q That is, for each revision? A For each revision.

A And about the same number, approximately?

Mr. O'Connor: Same objection.

A Not always the same number.

Q Well, approximately? A No there would be quite a difference; larger number received for the July edition than would be received for the January edition, because in certain localities there are many more retail—that is, many more line yard concerns than there are in other localities.

Q After this information is received on these differ-
1257 ent blanks what is done with it?

Mr. O'Connor: Objected to as immaterial.

A It is placed in the reference book of the Lumbermen's Credit Association.

Q I mean how is it handled first?

Mr. O'Connor: Same objection.

A It is written up for the files of the Association, placed on file.

Q I meant, Mr. Stadden, in what manner is the information preserved, and to what extent?

Mr. O'Connor: Same objection.

A Do you mean this information that refers—

Q Generally, on these different blanks; information that is sent in on these different blanks? A Well, after the information is written up, transferred from these blanks to our files, there is no further use for the original blank, they are usually bundled up, put in bundles and placed in the store room or around different places in the offices until such time as we get crowded for space, then they are usually thrown in with the waste paper and disposed of.

Q How is the information on these different reports compiled for the raters? A Compiled for the raters?

Q Yes. A Well, that would depend upon the information.

1258 Q Well, take the country yard list. A The country yard list is transferred on to slips; a slip is made for each town where the line yard concern has a retail yard, and they are placed in alphabetical order—

Mr. O'Connor: Objected to as immaterial.

A —by states and towns and the rater who has the particular state covered by the list is given those slips and he

checks them with the book he is rating and sees to it that each yard is placed at the proper town.

Q Well, the book that he is rating into is the printer's copy? A Known as the printer's copy.

Q Approximately how many reports and different pieces of information has the Lumbermen's Credit Association in its files, if you know?

Mr. O'Connor: Objected to as immaterial.

A Well, the number would probably exceed a million.

Q State whether or not reports and information is sometimes lost or mislaid?

Mr. O'Connor: Objected to as immaterial.

A Information is both lost and mislaid daily. It is not an uncommon thing.

Q About what will the number of letters received by the Association average daily?

Mr. O'Connor: Objected to as immaterial.

A In the neighborhood of two or three hundred; some days much heavier than that.

Q And during the revision work what will they average?

1259 Mr. O'Connor: Same objection.

A During the revision work, in a day, it would not be uncommon to receive 1500 to 2000 communications.

Q About how many communications or inquiries are sent out from your office for each revision?

Mr. O'Connor: Objected to as immaterial.

A Run somewhere between thirty and forty thousand, all told.

Q About how many trade journals and publications does the Association receive?

Mr. O'Connor: Objected to as immaterial.

A My recollection is something like a dozen or fifteen, may be greater than that.

Q I will ask you to state what publications you receive.

Mr. O'Connor: Objected to as immaterial.

A Can I refer to these (indicating)?

Q I show you a number of publications and ask you to state whether you receive them or not?

Mr. O'Connor: Objected to as immaterial.

A We receive weekly the Mississippi Valley Lumberman, the American Lumberman, the Southern Lumberman. We receive monthly the Lumbermen's Review of New York City, also the Lumber Review of Chicago monthly. The West Coast

and Puget Sound Lumberman. The New York Lumber Trade Journal we receive, I believe, semi-monthly. The Hard Wood Record. The Canada Lumberman, weekly. Also the Canada Lumberman monthly. The Southern Lumber Journal, 1260 monthly. The Lumber Trade Journal of New Orleans, semi-monthly. The Tradesman, monthly. The St. Louis Lumbermen, semi-monthly. The Southwestern Lumberman, monthly. Barrel & Box, monthly. Packages, monthly. The Southwestern, monthly. The Pacific Lumber Trade Journal, monthly. The Oregon Timberman, monthly.

Q How long has the Association been a subscriber to these different journals?

Mr. O'Connor: Objected to as immaterial.

A We have been subscribers to them ever since they were published. One of the publications there we have been subscribers to for twenty-six years. The others not so long, because they haven't been published so long.

Q Well, approximately how long?

Mr. O'Connor: Same objection.

A But we have been subscribers to the majority of those papers for not less than ten years and probably longer. Some of them are young publications, while a number of them—

Q In the interest of what trade or industry are they published, if any?

Mr. O'Connor: Objected to as immaterial and because the magazines are the best evidence.

A They are devoted exclusively to the lumber line.

Q What use is made of them in the office? What is done with the information contained in them?

Mr. O'Connor: Objected to as immaterial and because 1261 the question isn't confined to the witness' own knowledge.

Q If you know? A I do know what use is made of them. The information contained in these papers is sent to our correspondents at the different places, and an investigation made as to whether the information reported is correct, and if it refers to new yards or new manufacturing concerns we make an investigation with reference to their financial standing so that we may place them in the reference book and give them proper rating.

Q What is the character of the information contained in these different journals with reference to the lumber trade and kindred industries?

Mr. O'Connor: Objected to as immaterial and because the journals are the best evidence of their contents.

A They contain a great deal of information in reference to losses by fire, dissolutions, changes in firm names, failures, new mills being erected, new lumber yards being started, and information of that character.

Q And what does it amount to in volume or extent, large or small amount?

Mr. O'Connor: Same objection.

A Large. There is a large volume of information obtained through these papers.

Mr. Pease: We offer these journals, identified and referred to by the witness, as Defendants' Exhibits 52 to 71, both inclusive, of this date.

1262 Mr. O'Connor: Objected to as immaterial and incompetent.

Q State what, if anything, you did in connection with the July, 1901 and the January, 1902 revision of the reference book published by the Lumbermen's Credit Association? A I did rating on both of those editions.

Q What if anything did you do in connection with the other raters working on those revisions? A I had charge of the raters on those books, in connection with Mr. Clancy.

Q Mr. Stadden, in what manner is the information collated and preserved by the Lumbermen's Credit Association, as you have just stated, conveyed to its members or subscribers?

Mr. O'Connor: Objected to as leading.

A Conveyed to them through the reference book, a semi-weekly correction sheet published, the monthly supplement and by special reports.

Q How often is the reference book published? A The reference book is published twice a year, in January and July.

Q About how many names does it contain? A It contains between fifty-five and—

Q Fifty-five what? A Between fifty-five and sixty thousand names.

Q Fifty-five thousand? A Yes, between fifty-five and sixty thousand names.

1263 Q To what line of trade or industry is it confined, if to any? A It is confined to the lumber and kindred lines.

Q In what manner is the book arranged?

Mr. O'Connor: Objected to because the book is the best evidence of its contents.

A It is arranged alphabetically by states and towns and cities.

Q And how are the names arranged? A The names are arranged alphabetically under the town and city heading.

Q By means of what is the information contained in the book expressed?

Mr. O'Connor: Objected to because the book is the best evidence of its contents.

A It is expressed by a key which contains both letters and figures; the capital ratings being in letters, the manner of pay in figures.

Q How many different items of information are contained in this book as expressed by the key used, aside from the capital ratings?

Mr. O'Connor: Objected to because the book is the best evidence of its contents.

A 113 different items of information.

Q Where in the book is this key printed, if at all? A On the inside of the front cover.

Q Please state the manner in which the revision work 1264 on the book is done?

Mr. O'Connor: Objected to as immaterial.

A The revision blanks as received from the correspondents are taken in alphabetical order and the information contained on the revision blanks is transferred to the printer's copy.

Q Just a minute. When are these revision blanks sent out? A The revision blanks are sent out from three to four months in advance of the time for printing the new book.

Q And to whom are they sent? A They are sent to the correspondents of the Association located in the towns and cities.

Q Well, what towns and cities? A The towns and cities where the dealers and manufacturers are located upon whom we want information.

Q Now after the revision blanks are returned and arranged as you have stated, what is done then? A They are then turned over to the raters for the purpose of making any changes that should be made in the printer's copy. The raters work from these revision blanks, making such corrections as the revision blanks indicate should be made.

Q How is this printer's copy made up? A It is made up in alphabetical order according to states and towns and then the names of the dealers and manufacturers are arranged

alphabetically under the towns and cities. That is, printed pages of the reference book are cut up into strips and pasted on the blank pages of the printer's copy, each book of
1265 the printer's copy containing one state, a blank margin on the left for new names, and a blank margin on the right for names of new towns not already carried.

Q What if any information is transferred to the printer's copy in addition to this printed slip before the raters begin work on it?

Mr. O'Connor: I object to the question because the printer's copy would be the best evidence of its contents.

A All of the information accumulated since the last book was issued.

Q Well, what does that information include?

Mr. O'Connor: Same objection.

A The printer's copy include?

Q I mean what changes? A A transfer of all of the information that has been received since the last book was published is placed in the printer's copy, that is, any new dealers or manufacturers, together with their ratings, is placed in this printer's copy before the raters commence their work, so that the only thing that they need to pay close attention to is the information contained on the revision blank.

Q What is this information which is transferred to the printer's copy before the raters begin their work based upon, or what are the different sources of information from which it is taken?

Mr. O'Connor: Objected to as calling for a mere
1266 conclusion of the witness, and as immaterial.

A It is taken from the files of the Association and is based on information derived from correspondents, from the trade, from the parties reported on themselves, as well as some other sources, such as bank reports, information from the collection department.

Q Well, does that include all of the sources which you have mentioned? A It includes all the sources I have heretofore mentioned.

Q You are familiar, are you not, with the book known as the red bound book? A I am.

Q Do you know whether or not any of these new names of dealers or towns which you have stated as being transferred to the printer's copy before the raters begin their work are taken from the red bound book?

Mr. O'Connor: Objected to as leading and because the books themselves would be the best evidence of their contents and because it calls for a mere conclusion of the witness.

A I do know.

Q Are they?

Mr. O'Connor: Same objections.

A They are not. In many cases those names are transferred before the red bound book is made up.

Q When is the printer's copy made up with reference to the time that the red bound books are made up? A Sometimes the printer's copy is made up as far as pasting
1267 the printed sheets on the blank sheets are concerned, at the same time the red bound book is made up, but as I remember it they are not always made at the same time.

Q Aren't they often made before?

Mr. O'Connor: Object to the question as leading.

A They might be made before, sometimes.

Mr. O'Connor: His question was not whether they might be, but whether they were?

Q When is this information transferred to the printer's copy with reference to the time that the raters begin their work on the revision? A It is transferred to the printer's copy prior to the time they commence their work on the revision.

Q That is what I meant by, made up. A I didn't consider it made up until the rater had finished his work.

Q Well, it is simply a misunderstanding of my question, that is all. Are you familiar with the manner in which this red bound book is prepared?

Mr. O'Connor: Objected to as leading.

A I am.

Q Please state? A It consists of a book which originally consists of a manila cover with a red binding and blank pages on the inside. The pages of the last edition of the reference book are pasted on the blank pages a trifle to the left of
1268 the center of the page. Then after that has been done the new names from the other reference books are placed in the same, together with their ratings.

Q What other reference books, if you know? A Well, I haven't seen the work done myself, but I have an opinion, I know.

Q All right, state. A R. G. Dun & Company's and the Bradstreet Company's.

Q Now just explain in what manner the revision work is done by the raters, if you know. A You mean from the time the blanks are delivered to them?

Q Yes, sir. A They are given the revision blanks covering the states that they are to work on, also the printer's copy covering the same states, and they work from the revision blank, paying no attention to any town or city for which they have no blank, and they make such correction as should be made in towns that they have reports from before them. Then at a later day they get a second batch of blanks which have come in while they were working on the first batch, and these new blanks will probably cover a large part of the towns that had not already been heard from, and they will have a third and fourth and fifth, and sometimes the sixth edition of blanks.

Q You mean of revision blanks? A Revision blanks.

And if they find that they have not received reports from
1269 any town or city it is their business to see that—

Mr. O'Connor: I object to the witness stating mere conclusions.

Q Well— A They are instructed to obtain a report from that town or city, instructed, on the start,—

Mr. O'Connor: I object to instructions; objected to as immaterial, and incompetent.

A —That they must hear from each town and city.

Q Just explain in detail more fully just how this revision work is done, what the raters do with the revision blank, and describe the process in detail.

Mr. O'Connor: I object to the question unless it is confined to the witness' own work, his own knowledge.

Q Well, do you know how the other raters do their work? A I do.

Q Have you seen them do it? A I have seen them do their work.

Mr. O'Connor: Did you stand over them all the time they were doing their work?

A Not constantly, no, sir.

Q Is it under your direct personal supervision? A It is.

Q Go ahead and state them. A They take the revision blank and compare the names contained on the same, with the names in the book.

1270 Q What book? A In the reference book of the Lumbermen's Credit Association.

Q Well, as given in their printer's copy? A As given in their printer's copy, which is a reproduction of the reference book.

Q Well, I want the process by which they do this work. A And if they find that the correspondent has changed the spelling, changed the initials, the style of the firm, the classification of business, or the rating, they make the correction in the printer's copy.

Q Corresponding with what? A Corresponding with the information contained on the revision blank. And when they have completed their reference to that particular blank they check it and it is placed in the files of the Association.

Q What use was made by the raters of the red bound book if you know? A The raters themselves made no use of the red bound book whatever, except for the purpose of comparison, where the new revision reports would show an abnormal change in rating, as compared with the last reference book of the Lumbermen's Credit Association.

Q What do you mean, or what was regarded and treated as an abnormal change in rating? A Where it would be necessary to change the rating probably two or three
1271 letters above what the rating had been, or, in other words, where it would be necessary to make the rating twice or three times as much as it had been in the last reference book.

Q Well, what do you mean by necessary? A In order to make it conform to the report received from the correspondent, the new report.

Q Now then, what use, if any, did they make of the red bound book in those cases? A In such cases they would refer to the red bound book, make a comparison of the ratings, and if the red bound book would corroborate the new rating, they would then refer to the files of the Association, to the original files, get all the information we had, see if there was anything in the files that would clear up this discrepancy; if there was, they would then accept the correspondent's new report and change the rating accordingly. If, however, the information from the files did not assist them in confirming this new rating, they would write for further information, calling the correspondent's attention to the fact that in his last report he had reported the party as being worth a certain amount of money, and in his latter report at probably two or three times as much more, asking him to explain it. When that

information was received then the rating would be made to conform to the correspondent's report.

Q Were any new names or ratings copied from the red bound book to the printer's copy by any of the raters
1272 to your knowledge? A There was not.

Q What if any instructions did you give the raters with reference to the use of the red bound book?

Mr. O'Connor: Objected to as immaterial and incompetent.

A I instructed them under no circumstances to take any names from the book, or make use of any ratings. In fact, the raters worked from the revision blank constantly; they never worked from the red bound book.

Q What use did you make of the red bound book in the revision work which you did? A I made such use of it as I have heretofore stated, for the purposes of comparison.

Q Did you make any other use of it in connection with that? A I did not.

Q What if any other use was made of the red bound book?

Mr. O'Connor: Objected to as immaterial, and as assuming a fact not shown by the evidence.

A Principally for the purpose of finding new names, and those new names were investigated and in many cases we found that where Dun and Bradstreet reported parties engaged in the lumber business, they were carpenters, builders, wagon makers, blacksmiths, and in lines that our book does not cover and their names were of no use to us. If we found that they were in our line of business we obtained a report on them and rated, if they were entitled to any rating, according to reports received from our correspondent.

1273 Q In what manner were the new names investigated?

Mr. O'Connor: Objected to as immaterial.

A They were placed on our revision blanks, and the blanks forwarded to the correspondent with a request that he make report as to the line of business they were engaged in, and also make report with reference to their financial standing, and in some cases what we called our special report blank was sent to the correspondent and special investigation made.

Q What if any instructions were given the raters as to sending for information or revision reports upon towns or concerns from which none had been received up to the time they were doing the work on that town?

Mr. O'Connor: Objected to as leading, incompetent and immaterial.

A They were instructed to continue their efforts to obtain the information until they got it.

Q In what manner?

Mr. O'Connor: Same objection.

A By either obtaining it through our correspondent, through banks, through a member of the trade, by application for a personal statement or any means that they saw fit so that they could get the information direct.

Q Do you know whether they did this or not?

Mr. O'Connor: Same objection.

A They did.

Q Do you know whether they did? A I do.

1274 Q Did they? A They did.

Q Up to what time, with reference to the publication of the book revised was this followed up?

Mr. O'Connor: Same objection.

A Followed right up to the time that the forms were locked up, book to be printed.

Q What do you mean by, forms locked up? A Well, the pages were put in forms, so many pages in each form, lock them up and print them.

Q You mean on the press? A On the press. The effort was continued, and if the information came in after the page had been printed that particular page, the information was then used in the supplement which in many cases goes with the book.

Q How late, if you know, were changes made in the book?

Mr. O'Connor: Objected to as immaterial.

A Changes were made right up to the time that the press was ready to print the form.

Q How long was that before the publication of the book?

Mr. O'Connor: Same objection.

A Well, the press work usually consumes a trifle less than two weeks, so that some of those pages would be printed a little earlier than others.

Q In the revision work which you did, how often, or what percentage of names did you refer to the red bound book? A O, possibly—well, I should say not more than one name

1275 out of a hundred.

Q Do you know William E. Ferguson? A I do.

Q Do you recall the time that he was employed by the Lumbermen's Association? A Yes, sir.

Q What were his duties while employed by it? A A portion of the time he was rating on the July, 1901, reference book, the balance of the time he was checking off what is known as the office tickler, and writing, that is, having written up what we call rough reports.

Q Did you have occasion to confer with him or he with you, rather, with reference to this revision work which he did or any part of it? A Yes, sir, he referred to me a great many times in connection with his work.

Q What if anything did you do personally in connection with the revision work which he did or any part of it? A I went over the states that he was rating after he had completed his work.

Q What if anything did you do with reference to those states? A I found that he had been careless in his work, and I made many corrections in the ratings. I found that from what I could see that the ratings he had made for the new book did not correspond with the information received from the correspondent. I called him into my office and criticised him for his work, told him what I had found, &c., told
1276 him that he must rely entirely on the information received from our correspondents, together with the information on file, and under no circumstances to make changes in the ratings unless our information would confirm such a change. I also told him during this talk that under no circumstances was he to make any use of the red bound book.

Q As to the ratings, you mean? A No use of the red bound book as to the ratings; under no circumstances was he to make use of their ratings. As I have already stated, I told him he must rely upon our own information on file and the correspondents' reports, if there was not complete information it was his business to make a personal investigation.

Q Were the ratings in the printer's copy checked back with the ratings in the red bound book? A They were not.

Q Were the ratings in the printer's copy checked in any manner with the ratings in the red bound book or with any ratings in the red bound book?

Mr. O'Connor: Objected to as leading.

A They were not; never heard of such a proceeding.

Q Were the names or the new names or towns in the

printer's copy checked with the names and towns in the red bound book?

Mr. O'Connor: Same objection.

A They were not, no one was ever instructed to do such a thing, and I never heard of its being done.

Q I will ask you whether the raters conferred with
1277 you or you conferred with them frequently during this work on the revision?

Mr. O'Connor: Objected to as immaterial and leading.

A They did, and I did. They conferred with me daily, and in many cases I would go to them and look over their work and ascertain how they were doing the work, and probably on some points,—well, in many cases, I would give them instructions on different points.

Q State whether or not you were thoroughly familiar with this revision work at the time it was being done?

Mr. O'Connor: Objected to as leading and calling for a mere conclusion.

A I was perfectly familiar with it when the work was being done.

Q Do you know whether the raters in doing this revision work in any cases used the ratings in the red bound book by making a rating half way between when the Dun and Bradstreet rating did not agree? A I know of no such cases.

Q What were their instructions?

Mr. O'Connor: Objected to as immaterial.

A No rater was ever instructed to do anything of that kind.

Q What were their instructions in regard to the ratings in the red bound book?

Mr. O'Connor: Objected to as immaterial.

A Instructed to never make use of the ratings in the red bound book, but to use the information obtained through our correspondents.

1278 Q What did they do in cases, if any, where they had no information?

Mr. O'Connor: Objected to as immaterial.

A They made no change when they had no information.

Q Well, what did they do in the case of new names?

Mr. O'Connor: Objected to because the witness doesn't know what the raters may have done.

A They used no new names, they rated from the blanks.

They rated from the revision blanks and they made no changes except where they had blanks.

Q Is there any rating in the key used by the defendant Association in cases of lumber dealers or manufacturers where there was no information or not sufficient information on which to base a rating?

Mr. O'Connor: Objected to because the key is the best evidence of its contents.

A We have a number in our key to cover such cases.

Q What is it? A Namely, 100.

Q Know whether that was used by the raters or not in those cases?

Mr. O'Connor: Objected to because the witness doesn't know what the raters may have done.

A It was used.

Q Know whether Mr. Ferguson used it or not? A Mr. Ferguson did use it. I went over Mr. Ferguson's work after he had completed it, and know what he did.

1279 Q Do you know W. A. Glass, formerly connected with the Foster Lumber Mercantile Agency?

Mr. O'Connor: Objected to as immaterial.

A I do.

Q Do you know who he is working for at the present time?

Mr. O'Connor: Objected to as immaterial.

A I do.

Q Who? A R. G. Dun & Company.

Q Where?

Mr. O'Connor: Same objection.

A In their Minneapolis, Minnesota, office?

Q Mr. Stadden, what if any change in the system of rating on corporations as to the amount of capital stock paid up—

Mr. O'Connor: Objected to because the keys would be the best evidence.

A Whether any change has been made by us?

Q Yes. A We originally rated corporations only on the amount of their paid up capital. Some time ago, I can't give you the date, we changed.

Mr. O'Connor: How many years ago?

A I should say within the past two years, maybe a trifle longer, two or three years possibly. We had been rating corporations on the amount of their paid up capital and their surplus, taking both into consideration.

Q Prior to that no account was taken of the surplus? A None whatever.

1280 Mr. Pease: Here are some other clipping bureau reports I want to introduce as Exhibits 36a, 36b and 36c.

Mr. O'Connor: Objected to as immaterial and incompetent.

The taking of further testimony is adjourned until December 30, 1902, at 10 o'clock A. M.

December 30, 1902.
10 o'clock A. M.

Met pursuant to adjournment.
Present, as before.

Direct Examination of Burton W. Stadden Continued by Mr. Pease.

Q Mr. Stadden, I will ask you to look at a number of papers which are numbered 72 to 139 inclusive, and ask you to state what they are, or what name they are known by?

Mr. O'Connor: Objected to as immaterial and because the papers are the best evidence of their contents

A Number 72 is—

Q I mean generally, what are they? A Revision blanks taken from the files of the Lumbermen's Credit Association.

Q When were they sent out?

1281 Mr. O'Connor: Objected to as immaterial.

A The first one was—the first blank here was sent out in April, 1897. You want to know the date of—

Q What date or figures on the blanks indicate the time when they were sent out?

Mr. O'Connor: Objected to as leading and as assuming a fact not shown by the evidence, and because they are immaterial.

Q If it appears. A The figures following the date; the date is printed, then after date is written "4—97"

Q Those figures in each blank indicate what?

Mr. O'Connor: Same objections.

A Indicate the month and year that the blanks were sent to the correspondent.

Q To whom were these several blanks sent?

Mr. O'Connor: Objected to as immaterial and because the blanks are the best evidence of their contents.

A To the correspondents of the Lumbermen's Credit Association.

Q Where?

Mr. O'Connor: Same objections.

A At the towns indicated on the blanks, where the parties engaged in business were located.

Q What was done with these blanks after they were returned by the correspondents?

1282 Mr. O'Connor: Objected to as immaterial and leading.

A The information contained in the revision blanks was transferred to the printer's copy from which the reference book is made up.

Q Then what was done with the blanks?

Mr. O'Connor: Objected to as immaterial.

A The blanks were then placed in the files of the Lumbermen's Credit Association.

Q And where were they taken from, if you know, to be produced here?

Mr. O'Connor: Same objection.

A They were taken from the files of the Association.

Mr. Pease: We offer these blanks in evidence as Defendants' Exhibit 72 to 139, both inclusive, of this date.

Mr. O'Connor: Objected to as immaterial and incompetent and because it doesn't appear that the witness actually handled these reports and sent them.

Mr. Pease: I think that is all.

Cross-Examination by Mr. O'Connor.

Q How were these exhibits 72 to 139 sent? A They were sent by mail to the correspondent.

Q Who sent them out? A I can't say who sent them out.

Q Who mailed them? A I can't say.

Q How were they returned? A By mail.

Q Who received them? A I can't tell you.

1283 Q Then you had nothing to do with the mailing or the receipt of them? A No, sir.

Mr. O'Connor: I move to exclude all of the witness' testimony with reference to these exhibits, because it now appears that his testimony is not based upon his own knowledge.

Q You spoke of correspondents in other places; the Lum-

bermen's Credit Association has no office in any other place excepting New York City, has it? A It has not.

Q The correspondents to whom you referred were attorneys? A No, sir, not entirely.

Q Principally, were they not? A Largely attorneys, yes, sir.

Q Attorneys and banks? A Attorneys, banks and special mercantile agencies located in the large cities in most cases in large cities we are represented by some local agency.

Q That is, you have an arrangement with them by which you furnish them information and they furnish you information? A No, sir, we pay them so much for every report furnished.

Q That is, they furnish reports to you on special request? A On special request, and do our revising for us at a stated price.

Q On special request? A Yes, sir. They also furnish a great deal of voluntary information, that is a part of the agreement.

Q But the correspondents in most of the places are
1284 attorneys and banks are they? A In the small places they are attorneys and banks largely.

Q Your book now covers the whole United States, does it? A It does.

Q How long has it covered the whole United States? A It has covered the entire United States for something like three years, as I recall it.

Q What was the last addition made to your book? A The last addition was the Pacific Coast.

Q Of the United States? A Yes, sir.

Q The entire Pacific Coast? A Yes, my recollection is that it is the—

Q And some of the states back of the coast? A No, the territory added was what is known as the Pacific Coast territory.

Q When did you add Manitoba? A We have carried Manitoba for at least fifteen years; fifteen years that I know of.

Q What was the last part of Canada to be added? A We don't carry anything other than Manitoba outside of the United States in the book.

Q How many traveling men are in your employ? A Three.

Q Who are they? A F. W. Wright, J. E. McFall and William C. Thompson.

Q How long have you had three traveling men at the same time? A Three at the same time for about six
1285 or seven months.

Q Prior to that time you had how many? A Prior to that, two.

Q How long has the Lumbermen's Credit Association been making up the red bound book for its editions? A I don't know definitely.

Q How long to your knowledge? A Well, I can recall the red bound book for at least two years.

Q Do you mean to say that the Lumbermen's Credit Association has been making up the red bound book for only two years? A No, I don't say that; I recall it for that length of time.

Q Well, don't you know, Mr. Stadden, that it has been making up the red bound book for a longer period than two years? A No, sir, I do not.

Q When did Thorbus begin to make up the red bound book for the Lumbermen's Credit Association? A My recollection is, in the spring of 1901.

Q Who made the arrangement with him? A I believe that I made the arrangement myself.

Q Where? A I think in my own office.

Q Was Mr. Clancy present? A As I remember it now he was not.

Q Did you ever tell him anything about the arrangement? A I am of the opinion that I did.

Q You consulted with him about it before it was completed? A No, I wouldn't say that I did; I think that
1286 I completed it probably before I said anything to him.

Q Then you didn't consult with him about it? A Well, I may have consulted with him; of course it is a long time ago and the matter isn't fresh in my mind.

Q What is your recollection now whether you did or did not consult with him about it? I may have consulted with him prior to taking the matter up with Mr. Thorbus, but—

Q Prior to what? A I may have consulted with him prior to taking it up with Mr. Thorbus, and I think I made the final arrangements before anything further was said to Mr. Clancy?

Q But you did consult with Mr. Clancy about it to some extent before you made the final arrangement with Thorbus? A Possibly said something to him about what I intended doing.

Q What was the arrangement with Thorbus? A That he was to do the work on the red bound book.

Q What work? A The placing of new names from Dun and Bradstreet's book in the red bound book, that is, names that were not carried by the Lumbermen's Credit Association, and also placing the ratings in the red bound book.

Q What ratings? A The ratings of the two agencies I have just mentioned.

Q R. G. Dun & Company and Bradstreet? A Yes sir.

1287 Q What did you furnish to Thorbus? A I furnished him with the red bound books.

Q What was the condition,—describe the red bound book as it was when you furnished it to him? A The red bound book at the time it was delivered to him consisted of a blank book with pages of the last reference book of the Lumbermen's Credit Association pasted on each page, bound with a heavy manila board and red binding.

Q Was it in sections or parts? A It covered states; each book containing states.

Q Bound separately by states? A Yes, sir.

Q It was a duplicate copy of the last edition of the Lumbermen's Credit Association was it? A It was as far as the printed matter was concerned.

Q What edition was that? A Well, if the arrangements were made with him in the spring of 1901, as I recollect them, it would be the January, 1901, book.

Q Your January, 1901, book? A Yes, sir.

Q Which he was to prepare for what edition of the Lumbermen's Credit Association? A He was not advised as to what edition he was to prepare it for.

Q No, but for what edition did the Lumbermen's Credit Association intend to use it? A For the July, 1901, edition.

Q And what edition of R. G. Dun & Company's book was he to use to obtain the ratings from? A I suppose he

1288 did, their spring edition.

Q That is, their March, 1901, edition, was it? A Yes, sir.

Q That was your arrangement with him, was it not? A Yes, as I recall it that was the understanding.

Q Did he afterwards do any other work for you? A Yes, sir, he did considerable work for us.

Q Well, he did similar work didn't he for your January, 1902 edition? A He did similar work for the 1902 edition, yes, covering a different territory, however.

Q That is, you revise certain states for your July edition and other states for your January edition, is that the reason? A That is not strictly correct. There is a revision of the entire book, but not made, probably in the same way.

Q What do you mean when you say there is a revision of your entire book? A Well, we are receiving daily not less than 100 special reports, besides that a variety of other information which is considered a revision of that territory which had probably been revised just a few months prior to this time.

Q That is, you transfer to your book, to your tickler, the current corrections that you receive during the year, do you not? A Yes, that is correct.

Q And those corrections you of course insert in your new edition when it is issued? A Yes, sir.

Q That is what you mean by a revision of the entire
1289 book, is it? A That would be a revision of a portion of the book.

Q But you make a special revision of certain states at different times in the year, do you not? A Yes, sir.

Q In July you revise every name in certain states, do you not? A That is correct.

Q And in January you revise every name in certain other states? A That is correct.

Q As Miss Moore, I believe it was, testified. You heard her testimony, didn't you? A I did, but I can't recall it.

Q As you recollect, it was correct upon that point was it not? A My recollection is that her testimony was correct.

Q Now Mr. Thorbus prepared the red bound book for the Lumbermen's Credit Association's January, 1902, edition, did he not? A He did.

Q When did he prepare that book? A The book was prepared late in the fall and early winter.

Q Of what year? A Prior to January, 1902.

Q What edition of R. G. Dun & Company's book was used in preparing that book? A Supposedly the September, 1901, book.

Q That was the arrangement with him, was it not? A That is the book he was to use.

Q The red bound book which was prepared by him
1290 for the January, 1902, edition, was prepared in the same way as the red bound book for the July, 1901, edition, was it not? A It was.

Q That is, by transferring from R. G. Dun & Company's reference book and Bradstreet's reference book all the ratings that appeared in those books and such new names as appeared in those books and did not appear in the Lumbermen's Credit Association reference book? A No, I don't think you have made that clear.

Q Very well, you answer the question.

A The ratings that were placed in the red bound book were the ratings that referred only to names carried in the red bound book, did not consist of all the ratings carried in R. G. Dun & Company's book.

Q I perhaps didn't make myself as clear as I might. All the ratings that appeared in R. G. Dun & Company's reference book and Bradstreet's reference book relating to, or given to the persons appearing in the red bound book of the Lumbermen's Credit Association?

Mr. Pease: Not red bound book.

Q The reference book of the Lumbermen's Credit Association? A That is correct.

Q And such new names connected with the lumber trade as appeared in those two books and did not appear in the Lumbermen's Credit Association's reference book? A That is correct.

Q What was transferred to the red bound book with
1291 the new names? A If there be any rating following the new name, the rating was placed in the red bound book.

Q Before the Lumbermen's Credit Association employed Thorbus to do this work, how was the red bound book made up,—by whom was the red bound book made up?

Mr. Pease: I object to that as immaterial and irrelevant and incompetent, not referring to any edition of the reference book of the Lumbermen's Credit Association at issue in this case.

Mr. O'Connor: Yes, it does.

A I couldn't tell you who made up the red bound books prior to the time Mr. Thorbus did the work, because my recollection is that the work was done by a number of people.

Q Where? A I couldn't say that.

Q Part of it was done in your office was it not? A There might have been some of it done in the office.

Q By whom? A I couldn't tell you that.

Q Wasn't it done by some of the employes of the Lumbermen's Credit Association? A It might have been an employe, temporary employe, employed to do extra work, but I think very little of it was done in the office, if any.

Q Where was it done? A It was done largely at the homes of the people who did the work.

Q You remember any of the persons by whom the work was done? A No, I don't. We have a large number
1292 of people during the revision time, it is hard to remember; they are with us for a short time great many of them, sometimes I hardly know their names.

Q Part of the work on the red bound book for the January, 1902, edition, was done by Mrs. Wright, the wife of Fred Wright, was it not? A What edition is that?

Q January, 1902? A I don't remember that Mrs. Wright did any work on the January, 1902, edition.

Q Well, prior to the time that Thorbus made up the red bound book for the Lumbermen's Credit Association, the red bound book was made up by persons whom the Lumbermen's Credit Association specially employed for that purpose, was it not? A In some cases they might have been employed specially, in others they may not have been.

Q What do you mean when you say that in some cases they may not have been employed specially for that purpose? A I mean just what I say, that we would not employ them especially for that work.

Q They would do that work in connection with other work? A They might do that.

Q Is that what you mean? A That would be my meaning, yes, sir.

Q Has the Lumbermen's Credit Association ever been a subscriber to R. G. Dun & Company's reference book? A Not to my knowledge.

Q Has it ever been a subscriber to Bradstreet's ref-
1293 erence book? A Not as far as I know.

Q Where did the Lumbermen's Credit Association get the reference book that was used in making up the red bound book prior to the time that Thorbus began to make up the red bound book?

Mr. Pease: I object to the question as being too indefinite

as to time, and also being immaterial, irrelevant and incompetent. I think you ought to specify the time.

Mr. O'Connor: He can state and I can formulate my next question according to his asnwer.

A As I recall it, through a Mr. Gamet, that is my recollection.

Q Mr. Gamet is now dead, is he not? A I understand that he is.

Q Gamet was a subscriber to R. G. Dun & Company's reference book, was he? A I don't know as to that.

Q He procured the book for the Lumbermen's Credit Association, did he?

Mr. Pease: I object, as being immaterial and incompetent.

A Not to my knowledge.

Q Under what arrangement did he furnish the book to the Lumbermen's Credit Association?

Mr. Pease: I object to that as incompetent, immaterial and irrelevant.

A I don't know.

Q Did he make up the red bound book for the Lum-
1294 bermen's Credit Association? A Not as far as I know.

Q He merely furnished the reference book of R. G. Dun & Company and Bradstreet, to the Lumbermen's Credit Association?

Mr. Pease: I object to that.

Q Did he? A I don't know that he ever furnished the Bradstreet book, I am not clear on that point.

Q He merely furnished R. G. Dun & Company's reference book to the Lumbermen's Credit Association, did he? A That is my recollection.

Q Who made the arrangement with him for furnishing the book?

Mr. Pease: Objected to as immaterial irrelevant and incompetent.

A I didn't make the arrangement.

Q In what form was the book which he furnished when he furnished it?

Mr. Pease: If you know.

A I couldn't say whether it was in its original form or whether it might have been changed. I think probably in its original condition.

Q After it was delivered by him to the Lumbermen's Credit Association, what was done with it? A I don't know from my personal knowledge.

Q Did you have nothing to do with it after it was
1295 delivered to the Lumbermen's Credit Association? A Practically nothing until it was returned.

Q Returned by whom from where? A Returned from the binder.

Q In what condition was it when it was returned from the binder? A In the same condition it was originally.

Q Did you not see it between the time it was delivered by Gamet to the Lumbermen's Credit Association and the time when it was returned by the binder in the same condition in which it was delivered by Gamey? A Yes, in some instances I did see it between those times.

Q In what form was it when you saw it between those two times? A In such cases where I did see it, it was divided into states.

Q How were the parts bound? A As I remember it they were bound with a heavy manila cover.

Q By whom was the book taken apart and bound in manila covers?

Mr. Pease: Objected to as immaterial and incompetent.

A I didn't see the book taken apart.

Q Well, by whom was it done? A I didn't see the work done.

Q Who did your binding at that time?

Mr. Pease: Objected to as immaterial and incompetent.

A Binding was not done exclusively by one concern.

Q Do you know a binder named Volkert? A I saw
1296 him in the room here one day.

Q Did you never see him before? A Not to my recollection.

Q Did you never have any business relations with him? A The Lumbermen's Credit Association did business with him.

Q Did you ever do any business with him? A Not personally.

Q Directly or indirectly in behalf of the Lumbermen's Credit Association? A I never had any dealings with him whatever.

Q Who paid him for his work?

Mr. Pease: Objected to as immaterial.

A I don't know from my own personal knowledge that he was paid.

Q Who furnished R. G. Dun & Company's reference book to do the work that was done by Thorbus? A I didn't furnish it and I don't know who did.

Q Who was to turnish it under the agreement made with Thorbus? A He was to furnish it himself.

Q Did you visit his place while he was doing the work? A I don't know definitely, but I think that possibly I may have been in his office once, I am not sure whether it was while this work was in progress or not.

Q Did you ever see the work being done at his office? A I did not.

Q Or at his place of business? A No, sir.

1297 Q Did you ever go into Kelly's place of business? A Never was in Mr. Kelly's place. We do a great deal of other work through Mr. Thorbus and I may have been there in connection with that.

Q You have, yourself, taken part in the revision of the Lumbermen's Credit Association's book have you? A I have.

Q Where did the raters do their work? A They did their work largely in the office and also did some work at home nights, while others did their night work at the office; but in some cases the employes would take their work home with them.

Q While the raters were doing their work did they all sit together in the same part of the office? A They sat in the same room, some of them were considerably removed from each other, however.

Q How large a room? A O, the room is probably 75 feet long.

Q And how wide? A And probably 20 feet wide at some places. Other places it is much wider; it is long and then there is sort of an "L" running off to the private offices.

Q The raters sit in different parts of that room? A Yes, sir.

Q Did you do a part of the rating yourself? A I did.

Q How much of your time was employed on rating?

1298 A Considerable part of the time. I couldn't tell definitely how much. I put in the day from eight to six and also a good many nights.

Q How much of your time was put on rating? A Well, I should say that I put in fully fifty per cent of my time during the day and also a good deal of night work; the night work was devoted exclusively to the revision work.

Q And how long was this rating going on prior to the issue of the book? A The work for the January book is com-

menced in September and continues up to the time the book is printed.

Q And when does the work commence for the July edition? A For the July edition the work is commenced in March.

Q About half of your time was occupied in rating during the revision? A F[illegible] half the time.

Q How was the other half of your time occupied? A Occupied in looking after the office generally.

Q In what way? A In seeing that the work was properly handled by the raters; by conferring with them, they conferring with me.

Q Did you have any correspondence to do? A Yes, sir.

Q How much of your time did that take? A O, it would be impossible to tell how much time was consumed in looking after correspodnence.

Q What other duties besides correspondence did you have?

A I recall nothing in addition to general supervision
1199 of the office, this rating work and looking after the correspondence.

Q About how much of your time would the correspondence take? A It would be impossible to say.

Q Can you give us no idea? A I can not.

Q Some letters were introduced in evidence; did you receive those letters personally? A What letters do you refer to?

Q The railroad letters. A In some instances they were received by me personally.

Q Could you point out the particular letters that you received? A That would be impossible.

Q And you couldn't swear positively whether you received any of the letters that were offered in evidence or not, could you? A I know that I received some of them.

Q But you can't say which? A I could not.

Q Did you write the letters to which they are replies? A I did not.

Q You had nothing to do with the mailing of the letters to which they were replies? A No, sir.

Mr. O'Connor: I move to exclude the witness' testimony in regard to those letters as it appears that his testimony is not based upon his own knowledge.

Q Have you ever counted the number of names in the reference book of the Lumbermen's Credit Association? A I have

not counted each name, but I have counted the names
1300 on various pages and arrived at an average, and in that way figured the number of names that the book contains.

Q You say that new names were taken from R. G. Dun & Company's and Bradstreet's reference books and put in the red bound book, do you? A I don't know that I said that.

A What did you say? A Well, I don't know what I said on that point, but it was understood—

Q What is the fact? A The facts are that it was understood that any new names in the lines covered by the Lumbermen's Credit Association were to be placed in the red bound book.

Mr. Pease: From these two reference books?

A From the reference books that have been mentioned.

Q How did you determine,—or who was it determined whether they were new names or not? A Why any name added would be a name that we didn't carry.

Q Were they compared with the printer's copy? A They were not.

Q With what were they compared? A They were compared with nothing.

Q You say that they were names that you didn't carry? A Yes, sir.

Q Didn't carry where? A Didn't carry in our reference book.

Q Might not some of them have been on your office
1301 tickler? A They might have been.

Q They might not have been in your last edition, but might have been on your office tickler? A Yes, sir.

Q What was done with the new names? A The new names were placed on blanks, sent to our correspondents and a request made to make a report as to their financial standing, whether they were in business, and also show the line of business they were engaged in.

Q Were the new names that were in the office tickler and not in your last edition put on the printer's copy? A They were.

Q Then the printer's copy included all names that were put in your last edition and in the office tickler? A Yes, sir.

Q Then if a new name appeared in your red bound book as taken from R. G. Dun & Company's book, you wrote in regard to that new name, did you? A We did if the name was

not already on our records. I will explain to you if you want me to.

Q Certainly. A The revision blank contained the names of all of the dealers and manufacturers carried by us, whether it be our printed list or whether it be the names carried on the office tickler; hence, when it come to the new names in the red bound book, if the particular new name was already on the blank, the name from the red bound book was not
1302 placed there, because we already had it.

Q Then some of these new names may have been on the revision sheet? A Yes, sir, a great many of them were names that we already had when we come to send the revision out.

Q Well, in such cases where the name appeared in the revision sheet, the new name, what was done with it? A The new name?

Q Yes. A The new name, you mean, taken from the red bound book?

Q Yes. A That was placed on the revision blank and sent to the correspondent for verification and for report.

Q No, I am now referring to the new name that already appeared on your revision sheet. A A new name?

Q Yes, I understand you to say that some of the new names which were taken from R. G. Dun & Company's book may have appeared in the revision blank. A Well, as I said before—

Q Is that correct? A —said before, there were many names that were on our office tickler that we had already carried for some little time when this red bound book was made up and referred to for new names we found that we already had some of these new names, new people, and it wasn't necessary to make any use of the names in the red bound book.

Q In such a case, where the name was already in your office tickler, what did you do with reference to the rating? A Well, in all such cases the parties had been investigated
1303 already and we had discovered whether or not they were entitled to a rating, and their name had been transferred to the printer's copy and such rating as they were entitled to given them, but that didn't prevent us from adding their name to our revision blank.

Q But what was done when that rating differed from R. G. Dun & Company's rating given to the same party? A

There was no reference made to R. G. Dun & Company's rating on those names.

Q None whatever? A No, sir, we considered our information superior.

Q What was done with reference to the new names taken from R. G. Dun & Company's reference book that did not appear on your office tickler or on your printer's copy? A They were placed on blanks and sent to our correspondents, request made for a report.

Q Who sent them?

Mr. Atwood: Do you want to make further answer?

A I want to finish my answer.

Mr. O'Connor: Now Mr. Witness, you are my witness—

Mr. Atwood: You aint got any right to stop him.

A I want to finish my answer.

Mr. O'Connor: I want you to answer my questions and then your counsel can take care of you.

Questions and answers read.

Q Now, who sent them?

1304 Mr. Pease: Finish your answer.

A They were also—

Q I want to know who now,—who sent them? A I will complete my answer first.

Mr. Atwood: Go ahead.

A They were placed on blanks and requests made of our correspondent to furnish a report regarding their financial standing, the line of business they were engaged in—

Mr. O'Connor: I object to the witness finishing his answer and not answering the question.

Q Now Mr. Witness, will you answer my question, who sent for reports? A I can't tell you who sent them.

Q Did the raters have anything to do with sending for the information? A In some cases they did.

Q Not in all cases? A No, sir.

Q What did you do in your own case? A In some cases I obtained the information personally, and others I did not, it was obtained in the regular way.

Q Did the persons who sent for information send for it through you? A You mean the employes in the office?

Q Yes, or did they send for it directly? A They sent for it directly.

Q Were you always able to obtain all the information you wanted in regard to names before the publication of your

book? A Possibly not in every case all the information.
1305 Q What use did you make of R. G. Dun & *Company's* book in your own work?

Mr. Pease: I object to the question as assuming—

Q Did you use R. G. Dun & Company's reference book in your own work when you were doing the rating? A I did not.

Q Didn't look at it at all? A No, sir.

Q Never referred to it in any case? A I never had R. G. Dun & Company's book before me.

Q Well, did you ever look at R. G. Dun & Company's ratings in the red bound book? A I did.

Q When you were doing your work? A I did.

Q In what instances did you refer to those ratings? A In cases where our correspondent had indicated an increase in a party's rating of two or three or four times what he had been rated heretofore, in such cases I might refer to the red bound book, not only consult the rating of R. G. Dun & Company, but see what the rating of Bradstreet's key was.

Q If you found R. G. Dun & Company's rating corresponded with the information which you received, what did you do? A I would accept our correspondent's report, probably, although not necessarily. In most of those cases where there was such a great increase I called for the files and if, after an examination of the files and the new information the matter was not clear, it seemed as though there might
1306 be some great discrepancy, I would write a personal letter to the correspondent, give him all the facts and ask for an explanation.

Q Did you in every case? A I wont say I did in every case, but that was the custom.

Q But you say that in some cases you fixed the rating upon your correspondent's information when you found that it corresponded with R. G. Dun & Company's rating? A Not necessarily, no, as I say, I would consult both ratings.

Q What do you mean by both ratings? A Both Bradstreet's and R. G. Dun & Company's rating. In many cases R. G. Dun & Company wouldn't carry the party,—many cases.

Q But I am now referring to the cases where R. G. Dun & Company did give the rating. A I don't know of any such cases.

Q Well, were there any cases where you found that R. G.

Dun & Company and Bradstreet corresponded with the information which the Lumbermen's Credit Association had received regarding a party? A I don't recall any such cases.

Q Do you recall any cases where you referred to R. G. Dun & Company's and Bradstreet's books? A No, the references made very rarely; I don't recall the cases.

Q Do you recall any class of cases where you referred to those books? A As I have already testified in cases where the correspondent indicated that the party was worth
1307 three or four times as much as we had already rated him, I may have referred to the red bound book.

Q After referring to the red bound book what did you do? A Well, that would depend, if I felt satisfied from my investigation that the party was entitled to the rating I would be apt to give him the rating which our correspondent's report indicated he was entitled to.

Q What was the purpose of referring to R. G. Dun & Company's ratings and Bradstreet's ratings? A For the purpose of comparison.

Q Well, after making the comparison what did you do? You don't answer my question, Mr. Witness. A I depended upon the correspondent's report or the files.

Q When did you depend upon the correspondent's report?

Mr. Pease: Just finish your answer.

Mr. O'Connor: He has already answered that.

Q When did you rely upon your correspondent's report without referring to the files? A When the information on file and contained in the new report carried out the new rating.

Q What did you find in such cases in regard to R. G. Dun & Company's rating and Bradstreet's rating, in comparison with your information? A I don't recall any cases where they compared.

Q What did you do—

Mr. Atwood: Any individual cases, you mean?

1308 A I don't recall any individual cases.

Q I am now talking about a class of cases, Mr. Witness, not any particular case. You say that where the information received by the Lumbermen's Credit Association showed an increase of two or three or four times the last rating given by the Lumbermen's Credit Association to a party, you referred to R. G. Dun & Company's ratings and Bradstreet's ratings as shown in the red bound book; am I

correct? A I might have done so in some cases, I don't say I did so in all cases.

Q In what particular case did you make such a reference? A Be impossible to state the particular case.

Q Then you now can't tell us when you did refer, or under what circumstances you referred to R. G. Dun & Company's ratings and Bradstreet's? A I have already testified that when a new correspondent's report showed a great increase, probably three or four times what we had heretofore rated him, I may have made reference to the red bound book.

Q Did you in all cases? A No, sir, I did not.

Q Then you can't tell us in what cases you did? A There were very few cases; in fact the red bound book was considered by me of little or no use.

Mr. O'Connor: I ask that the witness' answer be stricken out as not responsive to the question.

Q I am not asking for your conclusions, Mr. Wit-
1309 ness, just answer the question. A I want to explain to you why I didn't use the red bound book.

Q I didn't ask you why you didn't want to use it. You just stated you did use it. I want to know the circumstances under which you used it. If you found that R. G. Dun & Company's ratings and Bradstreet's ratings corresponded with your information when you did refer to the red bound book, what did you do? A I don't know of any such cases.

Q If you found that one of them corresponded with your information but that the other didn't, what did you do in cases where you did make reference? A Don't know of any such cases.

Mr. Atwood: You mean individual cases? A Individual cases.

Q I am not talking about individual cases, I am talking about your habit, your practice. A My recollection is that they didn't agree.

Q Didn't agree with each other or with your information? A Didn't agree in any particular.

Q Then whenever you referred to the red bound book you found that neither Bradstreet nor R. G. Dun & Company agreed with your information, is that correct? A I said that I didn't believe that they did agree.

Q With what? A With each other or with us, didn't agree in any particular.

1310 Q Then, as I say, you found, whenever you referred to the red bound book, that they didn't agree, the ratings

of R. G. Dun & Company and Bradstreet didn't agree with the information received by the Lumbermen's Credit Association? A Usually they did not.

Q Who handed the red bound book, or rather, the proper parts of the red bound book to the raters before they began their work? A My recollection is that it was not the custom to hand the red bound book to them, they were simply—each rater was assigned certain states.

Q Well, the portion of the red bound book covering the states which the rater was revising? A Yes.

Q Were handed to the rater, were they not? A I don't think they were handed to him; he was simply assigned certain territory to look after and he could consult the red bound book or not, just as he saw fit.

Q Where did he find the red bound book? A The red bound books were in the general office of the Association.

Q Where were they kept? A They were kept on the work tables.

Q In the rating room? A In the general office.

Q Where the rating was done? A Yes, sir.

Q So that when a rater wanted to consult the red bound book he went to this table and got it, did he? A Not
1311 necessarily; he could have the book before him or not just as he saw fit, it was there. They were all together in a bunch.

Q Did you see any of the raters using the red bound book in connection with their work? A I never saw any one take anything from the red bound book.

Q You never saw a rater using any portion of the red bound book? A I have seen the red bound book laying at the side of a rater, but I never saw him make use of it.

Q You say that you consulted the red bound book where the latest information indicated an increase to two three or four times the last rating given to a party; what if the latest information indicated an increase of less than two times, say one and a half times the last rating? A If the increase meant simply an increase of one rating, that is, jumped it up one letter why there would be no reference made to the red bound book.

Q It was only when the increase was a jump of two or more letters, was it? A When it was something abnormal.

Q Well, what do you mean by abnormal, that is an indefinite word. A I mean just what I say when I said increase of two, three or four times.

Q Now I ask you if you would consider it an ab-
1312 normal increase of it is less than two times? A No.

Q How long did Ferguson work on the July, 1901, revision? A July, 1901? He commenced his work in the spring and was working on it up to the time the book went to press.

Q When did he finish his work? A I can't tell you definitely when he completed it.

Q How long before the issue of the book? A O, the work was practically completed probably some little time before the book went to press. Of course there are always straggling reports coming in, but the work is practically completed some little time in advance.

Q What states did he revise at the time? A The work that he was doing was Pacific coast states.

Q How many? A I don't remember the exact number now.

Q When did he complete his work with reference to July first? A I don't know when he completed the bulk of the work. Of course when I say there were straggling reports coming in—

Q Can't you give us some idea how long before July first he completed his work? A He probably had the bulk of his work completed probably two or three weeks before we went to press.

Q And you went to press when? A I don't know the date, the book was not out until after the first of July some time.

Q You went to press probably a few days before July
1313 first? A Well, we may have printed some of the early states about the first part of July, but we were late in getting the book out. It didn't come out until, as I recall it now, towards the middle of July.

Q Did I understand you to say that you revised his work after he did it? A I went over the work that he had done, state by state.

Q Did you go over the whole of it? A Yes, sir.

Q Every name? A Yes, went over every name. That is, every name that he had handled.

Q Did you go over all the other raters' work in the same way? A No, I did not.

Q He was the only rater whose work you revised in that way? A Yes.

Q How many raters were working for you on that edition? A There probably must have been seven or eight of us doing the work, as I recall it.

Q How many of them were new men? A I think we only had two men who were new, of which Mr. Ferguson was one.

Q Who was the other? A As I remember it, Mr. Howard. No, I think Mr. Howard was not with us then. I think we had one other new man however, who was only with us for a short time, he was not satisfactory, I can't tell you his name now. I think he only remained with us during the revision work.

1314 Mr. Howard came with us later. I remember now Mr. Howard didn't come until the latter part of the year.

Q When did you begin to revise Ferguson's work? A I took up the first state that he had disposed of as soon as he had completed it, and continued that work along as he finished up his work.

Q What did you notice about it? A I noticed that he had been careless, shiftless, in his work, and found that he was not paying close attention to the reports received from our correspondents, and I started in originally with the intention of going over a few pages—

Mr. O'Connor: I object to your stating any intention, Mr. Witness.

A Well, I started in to look over two or three pages.

Q Don't tell us what you intended to do, tell us what you actually did. A Well, what I actually did was to go over all of his work.

Q Well, you have stated that. A Well, you asked me what I had actually done; that is what I did do, and I found that his work was very careless and incompetent; found, as I have already stated, that he had not paid close attention to the correspondent's reports.

Q Where did he obtain his ratings if he didn't pay attention to the reports? A I can't answer, I don't know.

Q Why did you caution him about the use of R. G.

1315 Dun & Company's ratings?

Mr. Atwood: He didn't say that he did.

Mr. O'Connor: Yes, he did.

Mr. Atwood: O, no.

Mr. O'Connor: I object to Mr. Atwood—

Mr. Atwood: I object to your mis-stating.

Mr. Pease: That is right, he didn't testify to that, didn't say anything about R. G. Dun & Company's ratings.

Q Did you say anything to him about the use of R. G. Dun & Company's ratings? A I did not.

Q Did you say anything to him about the use of Bradstreet's ratings? A I did not.

Mr. Pease: You mean as such?

A As individual ratings I did not.

Q Then you never made any reference to R. G. Dun & Company's ratings or Bradstreet's ratings in your conversations, did you? A Not in the way you have put it.

Q I am now referring specifically to R. G. Dun & Company's ratings and Bradstreet's ratings. A I understand you very clearly, and I state I did not put it to him in the way you have.

Mr. Pease: What did you say; how did you put it?

Mr. O'Connor: I object to the counsel interrupting my examination.

Mr. Pease: Well, never mind, if you object?

Q Did you say anything to him about the use of the 1316 red bound book? A I did.

Q In fixing ratings? A I did.

Q What did you say to him? A I told him that under no circumstances to make any use of ratings contained in the red bound book.

Q This was after you had discovered the character of his work, was it? A It was.

Q Did you see in his work any signs that he had been using the red bound book? A I couldn't tell what he had been using.

Q Then why did you instruct him not to use the red bound book in fixing the ratings, after you had discovered the character of his work? A Because these were the instructions I had given him and I wanted to make the matter clear and definite so that he would understand the matter.

Q You found his work faulty in the first part of his work that you examined, did you? A Yes, sir.

Q Did you find the same faults in the last part of his work that you examined? A It run through his work rather generally in fact.

Q Did it run all through his work? A It run through his work rather generally, in fact, I found that on all the work Mr. Ferguson ever did he was the same way, he apparently couldn't get out of the rut of carelessness and shiftlessness.

1317 Q Then you found carelessness and shiftlessness all through his work, did you? A I did, it was not only with reference to the ratings but in spelling names and the initials and classifications, it run all through his work.

Q How do you know that Mr. Glass is working for R. G. Dun & Company? A I have been told by—

Q By whom? A By F. W. Wright, who saw Mr. Glass in—

Q You obtained your information from Mr. Wright, did you? A I did.,

Q Is that the only way in which you learned that Glass is working for R. G. Dun & Company? A Several parties have told me the same thing; one of his friends in St. Louis gave me the same information.

Q Who were the other persons? A The gentleman in St. Louis?

Q Were they connected with R. G. Dun & Company? A No, sir, they are now connected with Bradstreet Company. Mr. H. D. Owen, of St. Louis made the same statement.

Q They were not connected with R. G. Dun & Company, were they? A This gentleman was not.

Mr. O'Connor: I move that the witness' testimony that Mr. Glass is in the employ of R. G. Dun & Company be stricken out because it appears that his testimony was not based upon his own knowledge, it is mere hearsay.

Mr. Pease: You don't question the fact, do you?

Mr. O'Connor: I am not a witness, Mr. Pease.

1318 *Re-direct Examination by Mr. Pease.*

Q Mr. Stadden, in answer to a question on cross examination by Mr. O'Connor, you said that these revision blanks numbered 72 to 139 were sent out and received back in the regular course; what do you mean by that?

Mr. O'Connor: Objected to as immaterial and because the witness is not testifying of his own knowledge.

A I meant that they were mailed to the correspondent in the regular way, were received by mail in the regular way, and at the time they were received they were placed on file in the office, and when rating was done blanks were furnished to the raters and the corrections made in the new reference book from those blanks.

Mr. O'Connor: I ask the latter part of his answer be stricken out also, as not responsive.

Q Are you and were you at the time these several blanks were sent out and returned, familiar with the method and course of business of the office with reference to making out and sending out, and the handling of these revision blanks generally?

Mr. O'Connor: I object to the question as leading and because it calls for a conclusion and because the witness is not testifying of his own knowledge.

A I was perfectly familiar with the manner in which this work was done.

Q Where were they sent from.

1319 Mr. O'Connor: Same objections.

A Sent from the office of the Lumbermen's Credit Association in the Tacoma Building, Chicago.

Q By whose employes?

Mr. O'Connor: Same objections, and because it is going over the same ground a second time.

A By the employes of the Lumbermen's Credit Association.

Q And where were they returned to or received back?

Mr. O'Connor: Same objections.

A A self addressed return envelope accompanied each communication and they were received back at the office of the Lumbermen's Credit Association.

Q Anything else on the return envelope aside from the address?

Mr. O'Connor: Same objections and because the envelopes would be the best evidence of their contents.

A Each envelope contained a two cent stamp.

Q Contained or—

Mr. O'Connor: Same objections.

A Each envelope had on it a two cent stamp.

Q And by whom were the blanks handled after they were returned to the office of the Lumbermen's Credit Association, that is, by whose employes, if any one's?

Mr. O'Connor: Same objections.

A By the employes of the Lumbermen's Credit Association.

Q And in connection with what work were they after-

1320 wards used?

Mr. O'Connor: Same objections.

A In connection with the revision work being done on the new reference book.

Q What reference book, with reference to the time they were returned?

Mr. O'Connor: Same objections.

Q The next one?

Mr. O'Connor: And because the reference book would be the best evidence of its contents.

A With reference to the time that they were returned, the next reference book published.

Q Then after the revision of the respective books following their return, the return of these revision blanks, what was done with the blanks?

Mr. O'Connor: Same objections.

A The blanks were placed in the files of the Lumbermen's Credit Association.

Mr. O'Connor: Isn't shown that the witness did the work or is speaking of his own knowledge.

Q And where were these exhibits 72 to 139 found and taken from, to be produced here, if you know?

Mr. O'Connor: Same objections.

A They were found in the files of the Lumbermen's Credit Association and taken from its file.

Q When these new names were sent to the corre-
1321 spondents what information were they asked for with reference to them, what investigation did they make?

Mr. O'Connor: Objected to as immaterial and because the letters written to the correspondents would be the best evidence of their contents, and because it is not proper re-direct examination.

A They were asked whether the parties were in business, the line of business engaged in and also requested to make their report regarding their financial standing.

Q That appears from the revision blanks themselves, does it not?

Mr. O'Connor: Objected to as immaterial, because the revision blanks are the best evidence of their contents.

A The revision blank itself shows that.

Q According to the system of rating used by the defendant Association, in what cases is the "AAAA" rating given?

Mr. O'Connor: Objected to as immaterial, because the key is the best evidence of its contents, and because it is not proper re-direct examination.

A It is given in cases where the parties are worth $250,000.

Q Or more? A Or more.

Re-cross-Examination by Mr. O'Connor.

Q Mr. Stadden, who took these exhibits 72 to 139 from the files of the Lumbermen's Credit Association? A Some of them were taken from the files by myself.

1322 Q Which particular ones were taken by yourself? A I couldn't tell you just which blanks I took from the files.

Q By whom were the others taken? A Mr. Clancy took some of them from the files himself.

Q Were you present when he took them from the files? A I was standing by the side of him when he took a good many of them from the files.

Q Did any other person take any of them from the files? A Some of them were taken—

Q By whom? A Mr. Knefler took some of them from the files himself.

Q When were they taken from the files? A I couldn't give you the date, it is some little time ago now.

Q Were you standing there when Mr. Knefler took his from the files? A Not when Mr. Knefler took his from the files.

Q You don't know what particular ones he took from the files? A No, I don't know definitely.

Q Then you don't know of your own knowledge that he took them from the files? A I am now speaking of your own knowledge? A Not from seeing him take them I do not.

Q I understood you to say that you didn't mail these to the parties, to the correspondents?

Mr. Atwood: You mean those particular—

Q These particular exhibits, 72 to 139? A I didn't mail them.

1323 Q You didn't see them mailed? A Well, no, I probably didn't see them mailed.

Q Then you don't know of your own knowledge that they were sent to the correspondents? A Not from actually seeing them mailed.

Q All you know is that they were found in the files of the Lumbermen's Credit Association, or at least such part of them as you saw in the files? A Yes, sir.

Q That is all you know about them, isn't it? A Yes, sir, I know that they were taken from the files.

Mr. O'Connor: Now I move that all of this witness' testi-

mony regarding these exhibits be stricken out because it appears that the witness' testimony regarding them is not based on his own knowledge.

Re-direct Examination by Mr. Pease.

Q Mr. Stadden, is there any way of ascertaining what individual employe of the Lumbermen's Credit Association sent out and mailed these different revision blanks numbered 72 to 139? A Be an utter impossibility to know or find out.

Q Is there any way of telling what individual received them or opened the letters or envelopes in which they were returned?

Mr. O'Connor: I object to the question as assuming that they were—to this and the preceding question, as assuming that they were sent and returned.

1324 A That could not be found out.

Q How many employes of the Lumbermen's Credit Association are engaged in sending out these revision blanks for each revision of the book?

Mr. O'Connor: Objected to as immaterial.

A Usually there will be a half dozen people working on getting the blanks out, getting them mailed, &c., and then when they come back they sometimes come back by the hundreds of thousands and various people open them.

Q How many people, employes of the Lumbermen's Credit Association are engaged in opening, receiving and arranging these revision reports as they are returned?

Mr. O'Connor: Objected to as immaterial.

A In the neighborhood of six people looking after that particular work.

Q State whether or not you and Mr. Clancy took out of the files all of these exhibits 72 to 139, excepting those which were taken out by Mr. Knefler?

Mr. O'Connor: Objected to as immaterial and leading.

A We did, we took out all the files contained in that bundle except those taken out by Mr. Knefler.

Whereupon an adjournment was taken until 2 o'clock P. M.

1325 December 30, 1902. 2 o'clock P. M.
Met pursuant to adjournment.
Present, as before.

REVERDY WHITESIDE called as a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Atwood.

Q State your name? A Reverdy Whiteside.

Q You live here in Chicago? A Yes, sir.

Q Have you been doing any work with reference to Exhibit 9, being the January, 1902 edition of the reference book of the Lumbermen's Credit Association, and Complainant's Exhibit 6, being the September, 1901, edition of the reference book of R. G. Dun & Company, recently? A I have.

Q When did you begin this work? A Began on the day following Thanksgiving.

Q What have you been doing with reference to these two exhibits that I have mentioned? A I have been making some comparisons as regards the names that were originally checked in the Complainant's Exhibit number 9, as against the Complainant's Exhibit number 6, being the September, 1901, reference book of R. G. Dun & Company.

Q Now, just what work did you do? A Well, I took
1326 the Complainant's Exhibit number 9 in which— I took the January, 1902 reference book of the Lumbermen's Credit Association marked Complainant's Exhibit 9, in which there are certain names indicated by a cross mark in the left hand column; first I took a similar book, a book of the same edition, that is a reference book of the Lumbermen's Credit Association of January, 1902—

Q Which didn't have any— A Which was entirely blank in every respect, new; I thereupon took certain sections or certain states as most suited my convenience and indicated on the new book the same names which the same check mark or a similar check mark to those shown in the original exhibit. I then proceeded to make comparisons as between the names, the business classification, &c. In making these comparisons I first—

Q After you had checked in the fresh copy of the Lumbermen's Credit Association book of January, 1902, with a check mark the same names in front of which a cross appears in

Complainant's Exhibit number 9, what did you then do? A I then took the Complainant's Exhibit number 6, being the September, 1901, R. G. Dun & Company reference book and proceeded to make the comparisons.

Q With what? A With the copy that showed the check marks that I had made from the original exhibit, that is to say, this new book.

Q I will ask you is this book that I now show you, 1327 the new book of the Lumbermen's Credit Association of January, 1902, or a fresh copy, as you term it? A Yes, sir.

Q In which those check marks and memoranda were made? A Yes, sir.

Mr. Atwood: I ask that this be marked for identification, Defendants' Exhibit 140.

Q Go on and describe by reference to the book marked for identification, Defendants' Exhibit number 140, what you did in reference to comparing the names in front of which the check mark appears therein with the Complainant's Exhibit number 6 of the reference book of R. G. Dun & Company of September, 1901? A I pursued about the following method: I took the name of the concern as shown in the Defendants' Exhibit 140, and first compared that name with the similar name given in Complainant's Exhibit number 6, that is as far as the name of the concern. If any difference was shown in such comparison that difference was indicated in the right hand column which is left blank in this Exhibit 140.

Q Which was blank, you mean? A Which was blank, yes.

Q How did you indicate it? A Well, I indicated the difference, the difference that existed between the names shown, name of the concern shown in R. G. Dun & Company's 1328 book and the Lumbermen's Credit Association book of this January, 1902.

Q Well, did you write it out in this? A I wrote it out in that column (indicating).

Q In this Defendants' Exhibit 140? A Yes. I next took up the classification and compared the classification as between the two Exhibits and indicated by writing in the column, the right hand column, any difference that existed as between the classification shown in R. G. Dun & Company's book and the classification shown in the Lumbermen's Credit Association book.

Q Now if there was a difference in that classifictaion what did you do? A I indicated the—

Q Well, how did you indicate? A I indicated by writing out the difference in the right hand column.

Q That is, you wrote it in the right hand column as to how it appeared in Dun & Company's book, is that what you mean? A No, sir, I mean that I wrote the difference.

Q The portion which was different? A Yes, the portion which was different was indicated by writing in the right hand column.

Q If there was no business classification in R. G. Dun & Company's book how did you indicate that in Defendants' Exhibit number 140? A That was indicated by a straight, horizontal line in the right hand column.

1329 Mr. O'Connor: If there was no classification at all?

Mr. Atwood: Yes.

Q What if anything then did you do with reference to the ratings, the capital and credit ratings, appearing in the R. G. Dun & Company book, Complainant's Exhibit number 6? A I merely showed the rating. I showed the letter and number indicating the capital and pay rating as shown in R. G. Dun & Company, in a column that was drawn in Exhibit number 140 for that purpose; when there was no rating, when there was a blank rating, or where there was an absence of rating, it was merely indicated by a straight dash opposite the name it was intended to apply.

Q That is, you put down in Defendants' Exhibit number 140 in the first column at the right of the names, the letters and figures from R. G. Dun & Company's book denoting the capital and credit ratings, did you? A Yes, sir, where they appeared, and where they were absent the fact was indicated by a dash.

Q Simply a straight line? A Yes, sir.

Q If there was no capital rating but a credit rating given in R. G. Dun & Company's reference book what did you do with that? A The absence of the capital rating was indicated by a dash and the pay rating or credit rating was given as shown by a numeral.

Q Then you literally copied into this first column the
1330 ratings as they appeared in Dun & Company's book? A Yes, sir, as appeared against those names that are checked.

Q And in the other instances of differences in the spelling

and the classification, styles of the firms and initials or sir names, you indicated those by writing those differences in the right hand column? A Yes, sir.

Q On Defendants' Exhibit 140?

Mr. O'Connor: Objected to because the question assumes facts not shown by the evidence, the evidence not showing any differences in names, &c.; also leading.

A Yes, sir.

Q Did you find differences in names? A O ,yes, found differences in names, styles, that is, the style of the firm and in the spelling. I also found differences in the classification of the business; various differences of different kinds.

Q Any differences with regard to references referring to other towns? A Well, a few, yes, sir.

Q Well, where in Defendants' Exhibit 140 it said,—the statements were after a name "see purchasing department" at another place, and in R. G. Dun & Company's book simply said "see" another town, what if anything did you do to indicate any difference of that kind, if you found such difference?

Mr. O'Connor: I object to the question as leading and because it assumes facts not shown by the evidence.

1331 A I indicated such differences by the word "see" in parentheses.

Q What did you do where the name and the classification of business was identically the same in Defendants' Exhibit 140 and in Complainant's Exhibit 6? A Nothing was done whatever at all, that is as regards the name of the concern and the classification. If they were identical nothing was done.

Q That is then you didn't put anything in the right hand column? A Nothing in the right hand column whatever.

Q On Defendants' Exhibit 140? A Yes.

Mr. O'Connor: Where they were alike in all respects?

Mr. Atwood: Where they were alike in all respects.

Mr. Pease: Be alike in the respects mentioned, not in all respects.

Q What portion of this work did you do that is shown in Defendants' Exhibit 140? A In Defendants' Exhibit 140, the states Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Illinois, Indian Territory, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mich-

igan up to and including page 12; then North Carolina, North Dakota, Ohio, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, Manitoba.

1332 Q And the memoranda that appear in pencil in Defendants' Exhibit 140, in the states that you have named, are in your hand writing? A Yes, in Defendants' Exhibit 140.

Q Now what if anything did you do with reference to the Complainant's Exhibit 8 and the March, 1901, edition of the reference book of R. G. Dun & Company, being Complainant's Exhibit number ..... ? A I think I can cover that ground entirely in a very few words, by saying that exactly the same method was pursued and the same results notated there in the column, as given in my testimony in regard to the other two exhibits.

Q Look at the book I now hand you and state whether that is a true copy of the July, 1901 edition of the Defendants' reference book in which you made your memoranda and notations? A It is.

Mr. Atwood: I ask that that be marked for identification Defendants' Exhibit number 141.

Q In what states did you do this work in reference to Defendants' Exhibit 141? A I did Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Indiana, Indian Territory, Kansas, Kentucky, Massachusetts, Michigan, Pennsylvania up to and including page 32.

Q Has the entire book, Complainant's Exhibit number 8, check marks in front of or preceding the different names? A It has not, it is not complete.

1333 Q And all of the notations in Defendants' Exhibit 141 which appear in the states which you have named, are in your hand writing and were made by you, were they? A They were.

Cross-Examination by Mr. O'Connor.

Q How long have you been in the employ of the Lumbermen's Credit Association? A I am not in the employ of the Lumbermen's Credit Association.

Q Who hired you to do this work? A A gentleman named Mr. Kelly.

Q Is he the printer? A No, sir, he is not connected with a printing establishment that I know of.

Q What is his business? A Well, he does such work as this; he does addressing, and does different kinds of clerical work; that is he supplies help to do that kind of work.

Q What is his first name? A William; William C., I think his middle name is.

Q Where is his business located? A At room 612, 34 Clark street.

Q In the same building in which Mr. Thorbus is located? A Yes, sir.

Q How long have you been doing this work? A Well, off and on for about a year, I believe; not exactly this sort of work.

1334 Q I mean the copy of these books? A Well, I have been employed on it since the day after Thanksgiving, with the exception of about six or seven days.

Q Been working on it continuously? A Yes, sir, with the exception of those six or seven days.

Q All day? A Yes, sir.

Q Where? A In the Tacoma Building.

Q In the office of the Lumbermen's Credit Association? A Yes, sir.

Q How did you make the comparison? A Well, as I have stated.

Q What was the process? A The process was first—

Q Did any one assist you in making it? A No, sir.

Q You made the comparison yourself? A Yes, sir.

Q You referred to both books, did you? A Yes, sir.

Q You compared only the names that are checked? A Names that are checked.

Q In the reference book of the Lumbermen's Credit Association? A Yes, sir.

Mr. Atwood: That is, Complainant's Exhibits 8 and 9.

A Yes, Complainant's Exhibits 8 and 9, that is right.

Q As I understand, you made no comparison between the ratings? A I made no comparison.

Q You simply transferred the letters and figures which are found in R. G. Dun & Company's book to the Lumbermen's Credit Association book? A Yes, sir.

1335 Q As to the ratings? A As to the ratings.

Q If you found any difference whatever between the two books you noted the difference, did you, in the Lumber-

men's Credit Association book? A If I found any difference whatever as between the name that was checked in the Exhibit either 8 or 9, which check marks were transferred into a new book—if I found any differences between those names and the names as given in Dun's reference books, the two exhibits that are named, why I made a notation certainly.

Q That is, as I understand you, unless they read exactly alike in both books throughout, the name, business and rating, you noted whatever difference there was in the book of the Lumbermen's Credit Association? A No, sir, I didn't have anything to do with the ratings whatever, except to note them on the book, but any differences that existed as between—

Q In any other part of the— A In either the name of the concern or the classification, any differences were noted as I already testified to in the right hand column of the book.

Q And you considered it a difference unless they read exactly alike? A Yes, unless they read exactly alike I considered it a difference.

Q In all respects? A In all respects.

Q If in one book you found the word "lumber" in 1336 full, and in the other book you found the abbreviation "lbr" would you note the difference? A No, sir, that was disregarded.

Q Did the other gentleman who has been summoned as a witness assist you in this work? A The work that I did I had no assistance on whatever.

Q You know nothing about this work? A No, sir.

Q How long have you been in the employ of Kelly? A Been in the employ of Kelly off and on for not quite a year, about six or seven months.

Q What is your regular occupation? A I am a stenographer.

Q How long have you been a stenographer? A About eighteen years.

Q Eighteen? A Yes, sir.

Q For whom did you work last? A As a stenographer?

Q Yes. A Well, I haven't been regularly employed as a stenographer for a couple of years. I have done more or less stenography that is at times, I worked last summer for two or three months for Shea & Company, number 4 Clark street.

Q You have worked for Mr. Kelly only off and on? A Off and on, yes.

Q What sort of work do you do for him? A Well I have done different classes of clerical work.

Q For what other persons have you worked during the last two years? A The last two years, A. J. Bodkin & Company 300 Dearborn street.

1337 Q What kind of work did you do for them? A Filling in names on typewritten letters.

Q Temporary work? A No, I was regularly employed there.

Q How long did you work for them? A About a year and a half.

Q Addressing envelopes? A O, no; addressed some envelopes, but I was there to fill in names on imitation typewritten letters, on a typewriter.

Q For what other persons have you worked in Chicago? A I worked for the Fac Simile Typewritten Letter Company.

Q What kind of work did you do for them? A Filling in names on imitation typewritten letters.

Q How long did you work for them? A Well, I worked,—that was more of a temporary work. I worked there from the middle of February till the latter part of May.

Q What year? A This year.

Q What other persons have you worked for in Chicago? A Well, I was assistant credit man in the Continental National Bank from, let us see, from April until November, I think it was.

Q What year? A That was in 1899, I think.

Q What work did you do there? A Well, I started in there taking—doing the shorthand work and a lot of depositions in the District Court in Omaha, that was after I

1338 finished the depositions the Vice President of the bank wanted me to go down in a new department they were just establishing there, their credit department, wanted me to assist the credit man, which I did.

Q What kind of work did you do in assisting him? A I did all kinds of clerical work.

Q Do any typewriting? A O, yes.

Q Stenographic work? A Some, not much.

Q Assisted him in his correspondence? A Yes, sir.

Q On the typewriter? A Yes, sir.

Q And stenographic work? A O, yes. Well, we had a very elaborate system there of keeping information and all

that sort of thing, I kept that straight and made up comparative statements, in fact did such work as may be sent to me that is all; then during that time I did some stenographic work for Mr. McClanahan, the bank's attorney. I also did some stenographic work in the trust department, but there comparatively little.

Q What other persons have you worked for in Chicago? A Well, I worked for John Anda & Company.

Q What work did you do there? A I acted as corresponding clerk for them.

Q When? A That was '99 and 1900, I think.

Q How long were you working for them? A I worked from the time I left the bank until the following spring during the busy season.

1339 Q For whom did you work next? A That was before I went to Bodkin & Company, that I have already told you about.

Q After you left Bodkin for whom did you work? A The Fac Simile Imitation Typewritten Letter Company.

Q After you left them for whom did you work? A Well then I went to work for Mr. Kelly for a little while, then I went to Shea & Company, then from Shea & Company I went back to the Fac Simile Imitation Typewritten Letter Company again.

Mr. Atwood: That is answered.

Q For whom did you work before you worked for the Continental Bank?

Mr. Atwood: I object to that. Would have no objection in the world if Mr. O'Connor was paying for the write-up.

A I was employed here for quite a long time in taking—

Q My question is for whom did you work before you worked for the Continental Bank? A Immediately preceding the Continental Bank,—well, I worked for so many people right along there just doing odd jobs. I would go over in the morning to Wyckoff, Seamans & Benedict, and the manager of the employment bureau there would send me out to do whatever was wanted, whenever they wanted what he called a good man to do the work, that is the way I went to the bank, he sent me there.

Q To do temporary jobs? A Yes, sir.

Q Were you in the employ of Kelly in the fall of
1340 1901? A Fall of 1901?

Q Yes. A No, sir.

Q Were you in the employment of Kelly during the spring of 1901? A No, sir. I don't think I ever saw Mr. Kelly until about last February or March.

Q Did you ever see a book of the Lumbermen's Credit Association before you were employed to do this work? A Yes, sir.

Q Did you ever have anything to do with it? A Yes.

Q Did you work on it? A Well, not for—that is getting entirely outside of the case. I have seen the book in the regular line of business.

Q Yes, but have you ever done any work on the book or for it? A On the book or its contents, no, sir.

Q Yes, or for the book? A No, sir.

Q Do you know what the red bound book is? A I do, yes, what they call the red bound book, the Lumbermen's Credit Association book.

Q Did you ever do any work on any part of the red bound book? A You mean in the compilation?

Q Yes? A No, sir.

Mr. Pease: You mean this book here don't you (indicating)?

A Yes.

Mr. Atwood: By the red book

A Yes.

1341 Mr. O'Connor: That is all.

Re-direct Examination by Mr. Atwood.

Q When did you come in contact with the Lumbermen's Credit Association reference book first? A First was in connection with some mailing matter that Radford Brothers were getting out.

Q What is their business? A Sash, doors and blinds.

Q Do you know anything about, or did you do anything about the ratings in the Dun book and the Lumbermen's Credit Association book upon which you did the work that you have described, further than to transfer the same characters and figures, or same letters and figures from the Dun book into the Lumbermen's Credit Association book?

Mr. O'Connor: Objected to, because he has answered two or three times.

A No, I did nothing further.

Q What proportion of the names and classifications of the

business did you find in the work that you did, that were alike?

Mr. O'Connor: I object because this isn't re-direct examination and because the books are the best evidence.

A I didn't make any computation, but found very, very small percentage of them that were exactly alike.

Re-direct Examination by Mr. O'Connor.

Q When you say that a small percentage were alike
1342 you don't refer to the ratings at all, do you?

A Don't have anything—

Q You know nothing whatever about the similarity of the ratings? A I made no comparison whatever of the ratings.

Q And you didn't count the number of names in the book of the Lumbermen's Credit Association that was handed to you, did you? A The number of names that were checked that were handed to me?

Q Yes, in Exhibits 8 and 9? A No, I didn't count them at all.

Q And you didn't count the number of names that showed any differences? A No, sir.

ABRAHAM LINCOLN KNEFLER recalled for further direct examination by Mr. Pease.

Q Your name please? A Abraham Lincoln Knefler.

Q You have been sworn and testified in this case before? A Yes, sir.

Q Mr. Knefler, do you remember my requesting you to get some revision reports from the files of the Lumbermen's Credit Association some time last summer? A I do.

Q Were Mr. Clancy and Mr. Stadden in the city at
1343 that time? A No, neither of them were.

Q Did you get any revision reports for me at that time? A I did.

Q And what did you do with them?

Mr. O'Connor: Objected to as immaterial.

A I brought them to you.

Q And gave them to me, didn't you? A Gave them to you, yes, sir.

Q Have you seen them since? A No, sir.

Q Do you know what reports they were? A No, sir.

Q Where did you take them from?
Mr. O'Connor: Objected to as immaterial.
A From our files.
Q Where?
Mr. O'Connor: Same objection.
A In the office of the Lumbermen's Credit Association.
Q When you say "our files" you mean the files of the Lumbermen's Credit Association?
Mr. O'Connor: Same objection.
A I do.
Q Did you ever get any other revision reports for me? A No, sir.
Q Or give me any? A No, sir.

Cross-Examination by Mr. O'Connor.

Q You don't remember what the revision reports 1344 were? A No, sir.
Q You couldn't identify them if you saw them? A No, I hardly think so.
Q Are you certain that you have never handed any other papers to Mr. Pease since? A No, sir, I have not.
Q Did you ever hand any other papers to him before that? A No, sir.
Q Are those the only papers you ever handed to him at any time? A Yes, sir.
Q Are they the only papers you ever delivered to his office from the Lumbermen's Credit Association's office? A As far as I can recall, yes.
Mr. O'Connor: That is all.
Mr. Pease: That is all.

JOSEPH F. BEEGAN called as a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Atwood.

Q State your name? A Joseph F. Beegan.
Q And where do you live, Mr. Beegan? A Chicago, Cook County, Illinois.
Q Have you recently been doing some work in connection

with Complainant's Exhibit number 9, being the refer-
1345 ence book of the Lumbermen's Credit Association of January, 1902, and Complainant's Exhibit number 6, which is the reference book of R. G. Dun & Company for September, 1901? A I have.

Q What if any work have you been doing in connection with these two exhibits? A Well, on December the 10th I commenced, and was given a book marked Complainant's Exhibit 9, that book had certain marks in the left hand column in the margin before certain names, those names I took, and another book of the reference book of the Lumbermen's Credit Association of January, 1902 which was without marks of any kind except the printing in it and the marks that appear in this exhibit book number 9 in the left hand column opposite the firm names, I made a similar mark, cross, before the corresponding name in the blank book or book without any marks,—wasn't blank because there was printing in it.

Q Had no marks? A No other marks outside of the printing matter.

Q Go ahead and tell, describe what you did. A Those marks I continued out for a state, for instance, and after I had finished a state I would then take the books that I had marked that was blank and compare it with the reference book of,—Dun's reference book of September, 1901, any variance or difference in the firm name I would note in the right hand margin, the outer column, there were two
1346 columns. If there was a difference in spelling, a difference in either the christian name of the firm, title, any difference that existed between the name marked in the book, the new book or the unmarked book prior to that time, and the Dun's reference book of September, 1901, I would note in the outer right hand margin, I would then take the classification and if there was a difference or variance between the classification given in Dun's reference book and the reference book of the Lumbermen's Credit Association, I would note that difference.

Q How? A By writing it in the outer right hand column. The ratings, whatever rating appeared in Dun's I would put in the first column, right hand column of the Lumbermen's Credit Association if no rating appeared in Dun's opposite the firm name which the check happened to be would draw a horizontal line showing there was no rating in Dun.

Q In case there was no business clasification in R. G. Dun & Company's September, 1901, book, Complainant's Exhibit number 6, how did you indicate that in the book on which you were working?

Mr. O'Connor: Objected to as leading and as assuming a fact not shown.

Q Did you indicate that?

Mr. O'Connor: Same objections.

A If there was no business classification mentioned in Dun's, or named in Dun's, that would be noted in the
1347 book upon which I was working by a horizontal line or mark drawn on the outside right hand column opposite the name which bore a like mark. If there was a partial rating, that is, if the capital was given in Dun's but no credit rating then I would indicate by whatever letter appeared in Dun's for the capital or letters and by drawing a short line after the letters in case there was no credit rating, and if there was a credit rating but no capital given, just the reverse, a line be drawn first showing the omission of the capital and then whatever figures would indicate the credit rating.

Q What did you do where the names were spelled exactly alike and the classification was exactly alike in the book on which you were working and Complainant's Exhibit number 6, the Dun book? A If there was no difference would be left as it was and the book upon which I was working be no mark or anything else made. If, for instance, it was John Jones, Lumber business, I would just pass it, leave it go that way with the exception of the rating would always be inserted from Dun's if there was one, if not the horizontal line would be drawn showing there was no rating; where they agreed as to the name and classification why the matter was just left blank with the exception as I say of the rating.

Q You made no notation in the right hand column? A No, sir.

Mr. Pease: The outside?

1348 A The right hand column was where the—

Q In what percentage of the cases that you examined and made this comparison did you find them exactly alike?

Mr. O'Connor: Objected to as immaterial.

Q The name and classification? A The name and classification?

Q Yes. A Exactly alike?

Mr. O'Connor: And because the witness isn't shown to have made an examination and therefore isn't speaking of his own knowledge.

A Why, I should judge there would be about 95 per cent.

Q That there were differences? A Yes, sir, they wouldn't be exactly alike, I mean.

Q Ninety-five per cent. in which they wouldn't be exactly alike? A Exactly alike, yes, sir.

Q What states did you do the work upon in the January, 1902, edition of the Lumbermen's Credit Association book, being Complainant's Exhibit 140? A I will have to refer to my memoranda. Well, I began the work on the state of Minnesota, and I continued in alphabetical order down to—that would be Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico and New York. When I got there I turned back and finished what was left unfinished by somebody else in the state of
1349 Michigan. I commenced in the state of Michigan at the town of Central Lake, and finished the state.

Q And what other states? A Then Oklahoma, Oregon, Pennsylvania and Rhode Island.

Q Did you find in this examination any towns in which there were—or any instances in which you found differences in the towns, spelling of the towns or in the descriptions of the town?

Mr. O'Connor: Objected to because the books are the best evidence.

A I found towns marked, that is in that original book—I found towns in the book marked Exhibit 9, with marks opposite indicating that they appeared in the Dun under those towns, but the towns weren't in Dun at all.

Q Weren't in Dun's? A No, sir, not under that particular heading; that is, for instance, I don't know as I am giving the right name, I am giving an illustration. For instance, be a town of Westville, or something of that kind might be here, there would be marks opposite firm names in that town as being exactly the same as they were in Dun's and referring to that town in Dun's there would be no such town.

Q How many instances of that kind did you find? A O, I found, I couldn't say exactly, that would be a matter of—I know there were more than twenty, at least.

Q Well, just how did you do this work, Mr. Beegan? A

Well, in the way I say, I took a pencil, and a name 1350 appearing in this book marked Exhibit 9 with a check mark before it in the left hand column and any I found marked there in the states that I have mentioned appeared in this book I marked the same name under the same town in this book (indicating) that had been the unmarked book, the new book.

Q Exhibit 140? A Defendants' Exhibit 140, I marked the same name that appeared in the same town in this book Exhibit 140.

Mr. Pease: In what manner?

A With a lead pencil cross.

Q Before the name? A Before the name, in the same manner in which it appeared in the--not always with a cross, there were certain checks in this book that are indicated by a blue cross those I indicated in this book by a blue pencil, not with a cross but with a "V" check mark.

Q Then how did you make the comparison? A By taking these check marks and referring to that town and that name.

Q In what? A In the new book, Exhibit 140.

Q What did you do next? A I wrote out there any difference that may have existed, if any.

Q But what did you compare this new book, Exhibit— A O, I compared it afterwards with Dun; with Dun's reference book of September, 1901.

1351 Q Did you do any work with reference to Complainant's Exhibit 8, being the July, 1901, edition of the Lumbermen's Credit Association, and the March edition, 1901, of R. G. Dun & Company's reference book, being Complainant's Exhibit—with reference to this same matter? A I did.

Q What work did you do on those two books? A Well, the same work exactly as I did the other one, the book bore marks on the outer left hand column opposite certain names, firm names and individuals, they bore marks, I took a blank book of the July edition--

Q What blank books, this one marked Defendants' Exhibit— A 141, yes, sir, of the Lumbermen's Credit Association, July, 1901, and from this book I transcribed or made marks opposite the name appearing in the Exhibit 141 as I did before every name that bore a mark, cross mark in this Complainant's Exhibit number 8, I made the same mark opposite the corresponding name in the exhibit book 141.

Q And then what did you do after you had made those check marks? A After the marks were made in the state which I was working was completed, or part of a state, I took that book and compared it with Dun's reference book of March, 1901.

Q And how did you make the notation of the differences? A The same as in the other book, that is I take a name, firm name or individual name, any variance or difference ex-
1352 isting between the Dun's book and the Lumbermen's reference book, this exhibit book I refer to, any difference that existed in the typography or the transposition; sometimes there was transposition of names, might be Jones & Smith in one book and be Smith & Jones in the other, anything of that kind be noted in the right hand column of the—

Q Noted how? A By writing it in the—whatever appeared in Dun's book.

Q In this right hand column? A In this right hand column, yes, sir.

Q And the same with regard to classification? A With regard to classification, with this exception, I didn't write it out always in full, for instance, there would sometimes one would have T. Smith or Thomas C. Smith and the other one would have it T. J. Smith, I simply put T. J., without the Smith, referring to the initials only.

Q That is, the difference you put down? A That is all, yes, sir, but many times would have to write out the whole name that appeared in Dun's in order to show that difference because otherwise might be misleading.

Q On what states did you do this work in reference to Complainant's Exhibit 8 of the Lumbermen's Credit Association book of July, 1901, and the March reference book, 1901 of R. G. Dun & Company? A I did the states of Alabama, Arizona, Arkansas, California, Louisana, Iowa,
1353 Maine, Maryland, Minnesota, as far as the book was checked, it wasn't checked clear through, down to the bottom of page 28 in the red book; the state wasn't entirely checked, only about half the state was checked, and then Pennsylvania from the town of Greensburg, Pennsylvania to Nuremburg, inclusive.

Q Did you do any other checking with regard to the July reference book of the Lumbermen's Credit Association of 1901, marked Defendants' Exhibit 141? A I did.

Q Well, what? A In the Complainant's Exhibit book—

Q Complainant's Exhibit 8? A Book 8, yes, marked 8, on the right hand blank space there was no columns there, appeared certain horizontal marks after certain firms and individual names, and those I transcribed or made similar marks. No, I made them, not similar marks, but I made a mark opposite the names so marked in the Complainant's Exhibit book opposite the Defendants' Exhibit book 141.

Q What kind of a mark did you place in Defendants' Exhibit 141? A A small red ink cross at the right of the name principally, it was almost directly opposite, no particular place, but the major portion of them—the first part of the marking was done for the reason there being nothing written in there of the matter on the outside of the right hand column opposite the name on a line with the name, but the
1354 major portion of them were right immediately after the name on the first column.

Q And how did you mark the towns that were marked with a curve? A The towns that did not appear in Dun's but appeared in this Defendants' Exhibit 141, or did not appear as having been marked, I marked a quarter circle or half circle and than a large cross, red ink cross; marked as quarter or half circle whichever you call it, nearest it would come to missing, I don't know what it would be, whether be quarter circle or half circle.

Q How far did you go with this marking that you have last described? A The red ink?

Q Yes. A Down to the state of Iowa, not including Iowa; down to the state of Iowa.

Q In Exhibit 141? A Yes, from Alabama to Indiana —hold on, Indiana I think I did. Down to Iowa, not including; Iowa not included.

Cross-Examination by Mr. O'Connor.

Q Mr. Beegan, before you referred to R. G. Dun & Company's book you marked the names in the copy of the Lumbermen's Credit Association's book? A I did, in the original there, plaintiff's Exhibit book, yes, sir.

Q Then you made a comparison?

Mr. Atwood: In Complainant's Exhibits 9 and 8?

1355 A Yes, 8 and 9, whichever it was.

Q Then you made a comparison between R. G. Dun & Company's book and the copy? A I did, yes, sir.

Q In each case? A In each case, in all cases, yes, each and all.

Q I didn't exactly understand what you said about some towns being marked as appearing in Dun's which were not in Dun's? A Well, I take it this way, for instance, the town would appear in here (indicating)—

Q In what? A In that book there, the red.

Q Mention it so the reporter can take it down. A Excuse me, I beg your pardon. Well, in Complainant's Exhibit number 8, we will say a town would appear, just as an illustration, as Westville.

Q Can you find one of the actual places? A Well, I could find a good many if I had got my list, I didn't charge my memory with it.

Q Well, if you can't find the town, illustrate. A Well, for instance, what I was going to say, the town of Westville, under the town Westville, certain names would be marked, you understand?

Q Yes, would be marked where? A The names.

Q In the Lumbermen's Credit Association's book how? A In the exhibit, with a mark opposite the individual names under that town.

1356 Q Yes? A In referring to that town to find those names I wouldn't find such a town.

Q That is, you would find a check opposite the name? A Certain names.

Q This check mark, the cross? A Yes, sir.

Q Opposite certain names? A Yes, sir.

Q And you weren't able to find those names in R. G. Dun & Company's book? A I didn't say that, I said I wouldn't be able to find the town in order to find the names under that. They might be in R. G. Dun & Company's book somewhere, but not under that town.

Q You say that you think there are about twenty of those instances in both books? A I think so, that is merely an estimate, you know. I didn't charge my memory with them you know, there were quite a number.

Q You didn't count the number of names in either book? A O, no, sir; no, sir.

Q You made no comparison between the ratings in the two books? A O, no, sir; whenever a rating was given in

Dun it was put down, of there was no rating given in Dun there was just a horizontal mark in the first column.

1357 Q You made no comparison between the ratings? A Made no comparison at all, no, sir.

Q So you know nothing at all about the comparison. A I know it shows for themselves on the face of the exhibit.

Q Are you in the employ of the Lumbermen's Credit Association? A I am not.

Q In whose service are you? A I work for myself, but I was sent over there by a friend of mine, I was referred to Mr. Pease.

Q By whom? A By Mr. W. J. Kelly.

Q Are you engaged in any business for yourself? A I am public auditor and accountant, yes, sir.

Q Have you an office? A I have desk room; I don't have the whole office, I have desk room.

Q How long have you been occupying the office that you now have? A About,—I can't say, about five months I think, four or five months.

Q How long have you been in Chicago? A I have been in Chicago nine years.

Q Where was your office before your present office? A 338 Washington Boulevard.

Q Have you been in the same business? A Continuously.

Q Yes? A Yes, sir. Not for nine years. No, no, not for nine years I haven't, no, sir.

Q How long have you been in your present business? A I have been at that business six years; not quite six years, be six years next March.

1358 Q Have you done any work for Mr. Kelly? A Have I done any work for Mr. Kelly?

Q Yes, ever done any work for him? A I have, yes, sir.

Q What kind of work? A O, whatever he would happen,—if I was not doing anything I would work at whatever he had to give me.

Q Did you ever do any work for him for the Lumbermen's Credit Association before this work? A No, sir.

Q Did you do any work for him during the year 1901? A 1901?

Q Last year? A No, sir.

of Q Were you assisted in this work by anybody? A No, sir. Why, no, sir; the work that I did myself?

Q I mean this work, this comparison, work of comparison to which you have testified? A All the work I did—All the states which I say I did, I did myself, or parts of states; there was Pennsylvania and Michigan that I only did parts of them. I wasn't assisted by anybody in the parts of Michigan, part of Pennsylvania and all the other states that I have mentioned, as having done the work I did it all myself.

Q Mr. Kelly is a man who has an office or place of business at 34 South Clark street? A Yes, sir.

Q Same building with Mr. Thorbus? A Yes, sir.

Mr. Atwood: We offer these books in evidence as De-
1359 fendants' Exhibits 140 and 141.

Mr. O'Connor: I object to them as immaterial, incompetent and because the original books are the best evidence of their contents.

The taking of further testimony is adjourned to Friday, January 2, 1903, at 10:30 o'clock A. M.

1360 January 13, 1903.
2:30 o'clock P. M.

Met pursuant to notice.
Present, as before.

of L. EDWARD L. ROBERTS called as a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Pease.

Q Please state your name? A Edward L. Roberts.

Q What line of business are you engaged in Mr. Roberts? A Sash, doors and blinds.

Q Where? A 22nd street and Union Place, Chicago.

Q How long have you been engaged in that line of business? A Nearly thirty-six years.

Q With whom are you associated, and under what name are you now engaged in business? A With W. L. Sharp, under the name of E. L. Roberts & Company.

Q What reference books do you subscribe for if any, credit reference books?

Mr. O'Connor: Objected to as immaterial.

A I subscribe for Dun's, the Foster and the Lumber Mercantile Association.

Q You mean R. G. Dun & Company's reference book?

1361 A R. G. Dun & Company's.

Q And the Lumbermen's Credit Association, it is now? A Yes, sir.

Q How long have you been a subscriber for the reference book published by the Lumbermen's Credit Association and its predecessor in business?

Mr. O'Connor: Objected to as immaterial.

A Twenty years.

Q How long have you been a subscriber for the reference book of R. G. Dun & Company?

Mr. O'Connor: Objected to as immaterial.

A About sixteen years.

Q Mr. Roberts, does the reference book of the Lumbermen's Credit Association serve any purpose and fill any need in your business, other than that of the reference book of R. G. Dun & Company?

Mr. O'Connor: Objected to as immaterial and because the book is the best evidence of its contents and need.

A Yes, it does.

Q What uses do you make or have you made of the reference book of the Lumbermen's Credit Association?

Mr. O'Connor: Objected to as immaterial.

A We take our mailing lists from that book; we take our attorney's lists; we get the hardware trade who handle sash, doors and blinds; we get the names of a great many of the large buyers connected with line yards, or yards owned by the large companies, series of yards.

1362 Q What is there in reference to the arrangement of the reference book of the Lumbermen's Credit Association that enables you to use it especially for your mailing lists?

Mr. O'Connor: Objected to as immaterial and because the book is the best evidence of its character.

A It keeps in close touch with the changes, with the revisions in that special line of trade that we want to cover.

Q And what line is that? A Those using and buying sash, doors and blinds.

Q Does the reference book of R. G. Dun & Company contain that information?

Mr. O'Connor: Objected to as immaterial and because R. G. Dun & Company's book is the best evidence of its nature and character.

A Not so thoroughly as this book (indicating).

Q What is the difference in classification with reference to that trade?

Mr. O'Connor: Same objections.

A The difference in the classification is that the Lumber Mercantile book—

Q You mean Lumbermen's Credit? A Lumbermen's Credit book makes a specialty of that line more than the R. G. Dun does.

Q You mentioned something with reference to the line yards; what is there in the reference book of the Lumbermen's Credit Association with reference to them differ-1363 from R. G. Dun & Company's?

Mr. O'Connor: Same objections.

A Well, the lumber mercantile book gives the names of the buyers for those line yards.

Q You mean gives the name of the town where the purchasing department is located? A Yes, headquarters.

Q Now, with reference to the pay rating given in the reference book published by the Lumbermen's Credit Association, how does that differ from the credit rating given by R. G. Dun & Company?

Mr. O'Connor: Objected to as immaterial and because the books are the best evidence of their contents and character.

A The pay rating in the mercantile book is classified.

Q Which book do you refer to, the Lumbermen's Credit? A The Lumbermen's Credit. The name is changed, so that—

Q Yes, it was formerly the Lumber Mercantile? A Yes. It classifies the pay rating under the head of prompt, medium, slow, &c., classifies the pay rating.

Q Of what value is that as compared with the credit rating?

Mr. O'Connor: Objected to as immaterial and because it calls for a mere conclusion of the witness.

Q Well, it is of great value to the seller, from the fact that he can gauge the quantity, and exercise greater judgment in selling to men. He can discriminate between those who are prompt and those who are slow.

Q In their methods of pay?

1364 Mr. O'Connor: Same objections.

A Yes, extend credit.

Q Is there any information of this character given in Dun's reference book?

Mr. O'Connor: Objected to as immaterial and because Dun's reference book is the best evidence of its contents.

A Not that I know of.

Q In your experience of twenty years with this reference book, what have you found with reference to the information it contained?

Mr. O'Connor: Objected to as immaterial and because it calls for a mere conclusion of the witness.

A I have found it very accurate in all its information, and very prompt in giving the information as called for.

Q Have you also received special reports during that time?

Mr. O'Connor: Same objection.

A Yes, sir.

Q What has been your experience in reference to such reports as to the information?

Mr. O'Connor: Objected to as immaterial and because it calls for a mere conclusion of the witness.

A They have been fairly accurate.

Q What if any use have you made, or do you make of the Dun reference book?

Mr. O'Connor: Objected to as immaterial.

A We take that for a general rating.

1365 Q What if any addition, further use do you make of the Lumbermen's Credit Association's reference book as regards the space at the right of the name and the column for the freight rates?

Mr. O'Connor: Objected to as immaterial.

A Well, in the column on the right, when the rating is changed we so note it on the margin. As to the freight rates I can't say, don't know.

Q There is no such provision for noting changes in the reference book of R. G. Dun & Company is there?

Mr. O'Connor: Objected to as immaterial and because R. G. Dun & Company's reference book is the best evidence of its character and contents.

A No, sir, there is not.

Cross-Examination by Mr. O'Connor.

Q Have you a credit man in your firm? A Yes, sir.
Q Who attends to that part of your business? A Mr. W. L. Sharp.
Q How long has he occupied that position? A About twelve years.
Q Then it is he who makes use of these reference books to ascertain the standing of parties whose standings you want to know about, is it? A Not altogehter.
Q That part of the work falls to him as the credit man, does it not? A To a very great extent.

Q Who else attends to that part of the business?
1366 A In very small credits, a gentleman by the name of Dickson, in Mr. Sharp's absence Mr. Dickson takes it up on small credits, and large credits they are brought before me.

Q But they are brought to you only in the absence of Mr. Sharp, I assume? A Well, any large credit, Mr. Sharp frequently advises with me.
Q Well, when he advises with you do you consult the books yourself, or does he consult them and advise you of their contents? A No, he don't advise me of the contents because the books are quite familiar to both of us; we talk it over in a general way after knowing what the books show.
Q How do you learn yourself what the books show on such occasions? A I know by looking at them, if there is any question in my mind I look at the book.
Q But most of the credit work, the main part of it is done by Mr. Sharp? A Yes, sir.
Q Assisted by Mr. Dickson in small matters? A In the absence of Mr. Sharp Mr. Dickson will take up the small credits.
Q But when Mr. Dickson is present he attends to all credits, does he? A No, he does not, Mr. Sharp does.
Q I mean Mr. Sharp? A Mr. Sharp, the majority of the credits.

Q You said that you took Dun's book for general rat-
1367 ings; what do you mean? A Well, to get their money rating.

Q The capital rating? A The capital rating, yes.
Q When you want to ascertain a party's capital rating you refer to Dun's book, do you? A Not altogether, no.

Q I understood you to say you took it for that purpose. A Yes, we take it for that purpose.

Q For the capital rating? A Partially, yes.

Q Whenever you want to ascertain a party's capital rating you use R. G. Dun & Company's book, do you? A Not always.

Q Do you refer to it? A We refer to it often, frequently.

Q If there is any doubt in your mind about a party's capital rating would you not naturally refer to Dun's book to ascertain how he was rated in that book? A I might.

Q What is your usual custom? A I look at all of the books and then if I am in doubt I get a special rating.

Q From whom? A From this book (indicating) first, and then R. G. Dun's.

Q Then what? A Then R. G. Dun, and in case I want to make a more complete examination I take all three books, get a special rating from all three concerns.

Q What is Mr. Sharp's practice when he wants to 1368 ascertain a party's capital rating? A He takes about the same course.

Q Where is Mr. Sharp? A Mr. Sharp has gone to California, on his way there now.

Q Temporarily? A Yes, sir.

Q Who is performing his duties in his absence? A Mr. Dickson and myself.

Q What work is Mr. Dickson now doing? A Mr. Dickson is the order clerk.

Q What part of the credit work does he do now? A Well, he just takes the small credits, looks them over.

Q What do you mean by small credits; what amounts do you consider small? A Well, say anything from $200.

Q Down? A Down, yes.

Q Has he nothing to do with any credits above $200? A Well, there is no special limit placed as I know, but it is the custom that he hasn't taken anything but the small credits.

Re-direct Examination by Mr .Pease.

Q You use the reference book of the Lumbermen's Credit Association for capital ratings also, do you not?

Mr. O'Connor: Objected to as immaterial and leading.

A Yes.

Q Which book do you first consult, as a rule?
Mr. O'Connor: Objected to as immaterial.
A We consult this book first, the Lumbermen's Credit
1369 Association.
Q And do you consult the other books in all cases?
Mr. O'Connor: Objected to as immaterial.
A No, not in all cases.
Q And you only use the other books to consult with reference to the capital rating, is that right?
Mr. O'Connor: Objected to as immaterial and leading.
A No, not altogether.
Q Well, as a rule?
Mr. O'Connor: Objected to as immaterial and leading.
A No, I wont say as a rule.
Q Well, what is your practice with reference to that? A But that is the main thing we use it for, of course.
Q Well, do you make any other use of it?
Mr. O'Connor: Objected to as immaterial.
A We do when we want a special rating on a customer, we get that from all three of the—
Q That you send to the office for? A Yes, we send to the office.
Q That has nothing whatever to do with the book, has it?
Mr. O'Connor: Objected to as immaterial and leading.
A No.

Re-cross Examination by Mr. O'Connor.

Q Mr. Roberts, what information is given in R. G. Dun & Company's reference book in regard to a party?
1370 A As to their credit rating, or—
Q All the information given in regard to a party? A Well, it gives their credit rating.
Q What do you mean by credit rating? A It gives their mode of pay.
Q Is that all the information given? A Custom of pay, and the capital rating, and classifies the business.
Q If you want to ascertain any information about a party's business, would you ever refer to R. G. Dun & Company's reference book? A I might.
Q You have told us that in case you wanted to ascertain anything about his capital you would refer to R. G. Dun & Company's book in connection with the other books? A In connection with the other books.

Q If you wanted to ascertain how the party pays, what his reputation was as to mode of payment, would you ever refer to R. G. Dun & Company's book? A I might.

Q How do R. G. Dun & Company characterize or note the capital rating of a party in their book? A By a letter.

Q What letter? A Alphabetically, different letters, A, B, C.

Q Do you know any of the characters? A Yes.

Q What are they? A A, B and C, AA, AAA.

1371 Q Do you know what they indicate? A Some of them.

Q What, for instance? A Well, I will take E.

Q What does E indicate? A I think that indicates from one hundred and twenty-five to two hundred thousand.

Q What other ratings do you remember? A Well, I can't go into them because I can't remember it all.

Q How do they indicate the mode of payment? A Well, I guess you have got me on that.

Q Do you remember? A No, I do not.

Re-direct Examination by Mr. Pease.

Q Is there anything in the credit rating given by R. G. Dun & Company to indicate the manner or mode of payment?

Mr. O'Connor: Objected to as immaterial, because the witness has already answered the question, and because the book is the best evidence of its contents.

A O, no.

Mr. O'Connor: You don't remember what they do say about a man's mode of payment or how it is determined?

A No, I don't believe I do.

Q Mr. Roberts—

Mr. O'Connor: I object to the witness being shown one of R. G. Dun & Company's books by defendants' counsel, and his attention being called to the key in the same.

Q Just look at the key given in the reference book of R. G. Dun & Company, Complainant's Exhibit, 1901 Copy-
1372 righted Reference Book, and state what there is in that key, if anything, which indicates the manner or method or mode of payment?

Mr. O'Connor: Objected to because the key is the best evidence of its contents and because the question is immaterial and calls for a mere conclusion.

A It is by letter and figures.

Q Does that indicate the mode of payment?
Mr. O'Connor: Same objections.
A No.
Q What do the figures indicate, what do they refer to?
Mr. O'Connor: Same objections.
A Refers to credit.
Mr. O'Connor: Now close the book, Mr. Roberts; after looking at that book do you now know how R. G. Dun & Company indicate the mode of payment?
Mr. Pease: Object to the question because R. G. Dun & Company don't indicate anything.
A No, it doesn't show.
Mr. O'Connor: Do you know how they indicate the mode of payment?
A No.
Mr. Pease: They don't indicate the mode of payment, do they?
Mr. O'Connor: Objected to as immaterial.
(No answer)

1373 ALBERT W. TRUE called as a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Pease.

Q Please state your name? A Albert W. True.
Q What business are you engaged in? A I am Treasurer of the True & True Company, engaged in manufacturing and handling doors and windows and similar material.
Q Where is your place of business? A Our office and yards, warehouses, are located at Blue Island avenue and Lincoln street.
Q Chicago? A Chicago.
Q How long have you been engaged in that line of business or kindred lines? A In connection with the True & True Company since 1887, and for three years before that date with the Heinze & Baker Company as an employe.
Q Are you subscribers to the reference book of R. G. Dun & Company?
Mr. O'Connor: Objected to as imaterial.
A No, we are not subscribers at this date.
Q Were you at any time?

Mr. O'Connor: Objected to as immaterial.

A We have been at intervals ever since we have been
1374 in business.

Q When last?

Mr. O'Connor: Same objection.

A 1892.

Q Are you subscribers to the reference book published by the Lumbermen's Credit Association?

Mr. O'Connor: Same objection.

A We are and have been ever since we have been in business.

Q Does the reference book of the Lumbermen's Credit Association answer any different purpose than the reference book of R. G. Dun & Company, or did it at the time you were subscribing for both.

Mr. O'Connor: Objected to as immaterial and because it calls for a mere conclusion of the witness and because the books themselves are the best evidence of their character.

A Our credits are really directly based on the work of the Lumbermen's Credit Association.

Question read.

A Our use of the Lumbermen's Credit Association's book is based on several features peculiar to that book.

Q State what they are and what uses you made of that book.

Mr. O'Connor: Same objections.

A The book is typographically made so as to permit of various notations and additions and changes which we keep up from time to time in the margin of the book. In addi-
tion to this we base our credits and information regarding
1375 a certain class of the trade known as hardware dealers largely on the use of that book, the Dun book not running—the other agency books not including a special classification for our business. We also obtain peculiar information from the book in the way of novel or direct classification of what is known as line yards, that is, lumber yards with headquarters in one town and branch yards in numerous places, in that the book states the headquarters for each yard.

Q Which book? A The Lumbermen's Credit Association's book states the headquarters for each yard, that is, by headquarters I mean the purchasing departments. I don't recall any other peculiar features.

Q Of what particular value is that information?

Mr. O'Connor: Objected to as immaterial, because it calls for a mere conclusion of the witness.

A That feature of the book involves a marked saving in time, and of course to a less extent, of expense, in getting at the principals or head men in a business. We use the book for that purpose.

Q How about the pay ratings Mr. True?

Mr. O'Connor: Same objections.

A Of the Lumbermen's Credit Association's book?

Q Yes, sir. A I don't quite catch that; you say how about the pay ratings?

1376 Q What use do you make of them as compared—did you, as compared with the credit rating given in the Dun book?

Mr. O'Connor: Objected to as immaterial.

A Well, the key of the Lumbermen's Credit Association book is entirely distinct, a different basis from the Dun book, in that the pay ratings appear, whereas in the Dun book and the other general agency books the habit of pay is only stated as it pertains to the general credit.

Q Did you make any use of the railroad guide, shipping guide in the Lumbermen's Credit book?

Mr. O'Conor: Objected to as immaterial.

A We didn't.

Q Or the freight rate columns? A We don't use the freight rate columns to any extent.

Q What if any use do you make of the Lumbermen's Credit Association book as regards the mailing lists?

Mr. O'Connor: Objected to as immaterial.

A We use the books almost continually as mailing or circular lists on account of the value of the book, it is accurate, up to date.

Q Why do you say that, on account of the value of the book, what do you mean by that?

Mr. O'Connor: Objected to as immaterial, and because it calls for a mere conclusion of the witness.

A I should say this, that my experience with the book would indicate that it is brought up to date and of more

1377 accuracy than any other book that we use, and in consequence of that opinion of its value, we use it more than we can any other book.

Q Does it contain names in your line and in the lumber lines not included in other books?

Mr. O'Connor: Objected to as immaterial and because the books are the best evidence of their contents.

A I should say, as a general proposition, that this book contains quite a good many names which we do not commonly find in the general agency books.

Q Including the Dun book? A Including the Dun book. By the general agency books I mean the book of the Bradstreet Company and R. G. Dun & Company.

Q Now is the more peculiar and specific classification given in the Lumbermen's Credit Association book of any particular value in your business?

Mr. O'Connor: Objected to as immaterial and because it calls for a mere conclusion of the witness, and it is leading.

A In the classification of the trade as lumber dealers, as a general proposition, the lumber agency book is very much like the general agency books, though where we strike the hardware trade which is solicited largely by us, the names all appear in the general agency books, including R. G. Dun & Company's as hardware dealers, wherein in this Lumbermen's Credit Association book they are rated as hardware
1378 dealers in sash, doors and blinds, classifying them to a list peculiar to our business, that list is of very considerable value to us.

Q What use do you make of the Lumbermen's Credit Association book as a basis of credit?

Mr. O'Connor: Objected to as immaterial.

A Well, it is the first book practically which we consult in establishing our credits.

Q And in establishing your credit what if any attention is paid to the pay ratings?

Mr. O'Connor: Objected to as immaterial and calling for a mere conclusion of the witness.

A We find the pay ratings of considerable value inasmuch as we can ascertain the habit of pay from that book, as distinguished from the general credit.

Q Will you please explain just exactly what you mean by that, and illustrate, if you wish?

Mr. O'Connor: Objected to as immaterial and calling for a mere conclusion.

A Well, in this way. A concern may have a certain capital rating, we will say, $40,000, they may have in addition to their capital, ample backing which would make their credit

perfectly secure and good, at the same time they may be guilty of careless business habits and loose methods of paying. Now I would illustrate it in that way by stating that that concern would be in good credit, but would be slow pay. I give 1379 that as an illustration, just an instance.

Q What if any effect or bearing has the manner or mode of payment upon the question of credits?

Mr. O'Connor: Objected to as immaterial and because it calls for a conclusion of the witness.

Q Generally, in your business and experience? A The mode of payment, of course, the main feature in establishing or accommodating a credit rating, it is the main feature. There are some other things but that is the main thing.

Q You don't mean a credit rating, do you, you mean a credit? A The credit.

Q Does the rating 33, given in the reference book of the Lumbermen's Credit Association ever enter into the credit?

Mr. O'Connor: Objected to as immaterial and because it calls for a mere conclusion.

A It does, has a very considerable bearing on our credits.

Q In your experience in this line of business how have you found the reference book of the Lumbermen's Credit Association—have you found the information contained in the reference book of the Lumbermen's Credit Association?

Mr. O'Connor: Objected to as immaterial, calls for a conclusion of the witness, and because the book is the best evidence of its contents and character.

A In my use of the Lumbermen's Credit Association book and the other books of which we have been subscribers, I have always placed the highest confidence and value on the book 1380 of the Lumbermen's Credit Association and its predecessor, the result of a very long experience with that and other books, and considerable information on the subject covering a good many years.

Q State whether or not you have generally found the information it has contained reliable and accurate?

Mr. O'Connor: Objected to as immaterial and because it calls for a conclusion of the witness.

A I have found the ratings in that book to be accurate and conservative to a very marked degree.

Q Do you know how it is regarded in the lumber and kindred trades generally?

Mr. O'Connor: Same objections, and calling for hearsay evidence.

A Only in a general way I know; in a general way I know that the book is quite generally used among the lumber trade at Chicago and in the northwest. I have seen the books in offices at various places.

Q About what use do you make of this book as compared with the other book when you had both of them?

Mr. O'Connor: Objected to as immaterial.

Q I mean the Dun book. A Well, I have used this book as the foundation for my opinion of credits; I used the Dun book and the Bradstreet book as supplementary, to fill out what information I cannot get from the other book.

1381 Q Well, what do you mean by that? A Well, in case I have time for only one to consult only one record on a new customer, I take this book; in doubtful points I look this up and then through the other books, whatever I may have.

Q You refer to "this book," you mean the Lumbermen's Credit Association book? A First, yes.

Q Did you use that generally instead of the other books?

Mr. O'Connor: Objected to as immaterial.

A I only used the other books as a mode of—to supplement my information that I found in this book.

Cross-Examination by Mr. O'Connor.

Q Mr. True, has your firm ever had any trouble with R. G. Dun & Company? A I don't remember that they ever had, Mr. O'Connor, I think not.

Q How long did they use R. G. Dun & Company's book? A Well, we have had the books a year or two years at a time, at intervals, ever since we have been in business. We alternate the book of R. G. Dun & Company with Bradstreet's, about every other year more or less.

Q You alternate? A Yes.

Q Are you taking Dun's or Bradstreet's now? A Our subscription for the Dun expired with the last of 1902, and we have taken the Bradstreet's agency now.

Q Has your firm a credit man? A Yes, sir, I
1382 I am the man.

Q When you wanted to ascertain the financial standing of a party to what book would you refer? A If unimportant, I would always take the Lumbermen's Credit Association book first, if on any doubtful points I obtain all the information I can possibly get from all the books we have.

Q Do I understand then, if you are seeking to ascertain information about a man's standing and you had the Lumbermen's Credit Association's book and either Bradstreet's or Dun's book also, you would in some cases refer to the Lumbermen's Credit Association alone, and make no reference to R. G. Dun's and Bradstreet's? A Yes, I would at times.

Q Although you wanted to obtain all the information you could get regarding the person whom you were investigating? A In regard to small credits, I am frequently satisfied with the first investigation. In regard to any important credits I obtain all the ratings that we have in the office.

Q What would you call an important matter? A Well, if I were selling a man a bill of $1000 I should look up all his ratings, every possible source of information I could get.

Q Well, suppose a man wanted to buy goods to the amount of $500, would you examine one book only? A The chances are that I would examine the ratings from all the books, it 1383 depending on how busy I was; if I had leisure time, was not busy I would probably take them all, if I was too busy I wouldn't.

Mr. Pease: In that case what book would you consult?

A In any case I would take the Lumbermen's Credit Association's book.

Mr. Pease: First?

A First.

Q What information is given in R. G. Dun & Company's book regarding persons mentioned in it? A First there is the name, of course, then the kind of business, and then the capital and the credit ratings according to the key, also a small character indicating, for circular purposes, the kind of business.

Q How is the capital rating indicated? A The capital rating is indicated by letters.

Q Do you remember any of the capital ratings? A I don't recall the key in detail, at all.

Q In Dun & Company's key? A I don't recall the key in detail at all.

Q How is the credit rating indicated? A The credit rating is indicated by numbers.

Q In what way? A May I—to illustrate,—I don't recall the key well enough to illustrate in exact detail, but for instance, a man would have a capital rating indicating him to be

worth $40,000, which is indicated by a letter, his credit
1384 rating would be either one of two or one of three figures, according to the capital, I don't—

Q Do you remember what the figures— A I don't recall them, they vary with the capital rating, and I don't recall them in detail at all.

Q How long have you used R. G. Dun & Company's book in your business? A I think we subscribed the first year we started, which was 1888, I am not sure of the date, but we have had the book at intervals ever since then.

Q If you wanted to ascertain a man's credit to what books would you refer? A In distinction with his capital?

Q Yes. A That is hardly a possible thing, because the credit and the capital are so united it is seldom that one would look for a credit without the capital. I don't ever remember to have had occasion to look that up as distinct from the capital.

1385 C. F. WIEHE called as a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Pease.

Q Please state your name? A C. F. Wiehe.

Q And you business? A Secretary of the Edward Hines Lumber Company.

Q What business are they engaged in? A The lumber business.

Q Where is their place of business? A Lincoln street and Blue Island avenue.

Q About how much business are they transacting annually?

Mr. O'Connor: Objected to as immaterial.

A They do a business of between six and seven million dollars a year.

Q What are your duties?

Mr. O'Connor: Objected to as immaterial.

A Credit man and Secretary of the company.

Q Are the Edward Hines Lumber Company subscribers to the reference book of R. G. Dun & Company?

Mr. O'Connor: Objected to as immaterial.

A Yes, sir.

of
the.

Q And how long have they been?
Mr. O'Connor: Same objection.
A Why, I think betwen two and three years.
1386 Q Is the company also a subscriber to the Lumbermen's Credit Association's reference book?
Mr. O'Connor: Same objection.
A Yes, sir.
Q How long has it been?
Mr. O'Connor: Same objection.
A Since our organization in '92.
Q How long have you used the reference book published by the Lumbermen's Credit Association?
Mr. O'Connor: Same objection.
A For twenty-three years.
Q State whether or not the reference book of the Lumbermen's Credit Association serves any different purpose, fills any different need than the reference book of R. G. Dun & Company or the other general agencies, in the lumber trade?
Mr. O'Connor: Objected to as immaterial and because the books themselves are the best evidence of their contents and character.
A I think the Lumber Credit Association book fills the same need as to the lumber trade, as compared with the Dun book, that a specialist and a general practitioner; I would class the Dun book as in the list of the general practitioner, and Clancy's book as a specialist in that line.
Q What different uses do you make or have you made of the two books Mr. Wiehe?
Mr. O'Connor: Objected to as immaterial.
1387 A Well, the R. G. Dun book we used merely as a reference book; Clancy's book we use for various purposes; first as a mailing list book and as a book to keep record of rates in. We also make notations and memoranda on the leaves of the book, there is a space on the side of the book for that purpose and—welll, that is about, I should think, about all we use it for.
Q What if any use do you make of the shipping guide?
Mr. O'Connor: Objected to as immaterial.
A It is used for the routing of cars also, we receive an order for a certain point and the book is referred to as to the railroad upon which this point is located, and it is used as a shipping guide.
Q What is there about the arrangement of the Lumber-

men's Credit book that makes it of special value as a mailing list in your business? Depo C. F

Mr. O'Connor: Objected to as immaterial and because it calls for a conclusion of the witness.

A It is classified as to the different lumber pursuits or lines, for example, that book specifies who keep lumber stocks, who are wholesale and who are retail buyers, who are entitled to buy by car loads. It gives the names of the purchasing agents of line yards and classifies hardware dealers who handle sash, and doors and who handle shingles, classifies saw mill men who manufacture shingles and who are manufacturing lumber, and if we desire to send a circular out to

1388 shingle men for example, we go to Clancy's book, and send it to the shingle manufacturers, which can readily be obtained there without much picking out or looking.

Q What use do you make of the pay ratings in that book?

Mr. O'Connor: Objected to as immaterial; calls for a conclusion of the witness.

A Clancy's book clearly classifies the way people meet their obligations irrespective of the credit or capital rating, which is a great advantage to a man extending credit. I frequently extend credit to a man who has no capital and credit rating, simply on his method of payment which Clancy's book supplies.

Mr. O'Connor: I move to strike out the portion of the witness' answer beginning "I frequently" &c., as not responsive and because it is immaterial.

Q Is there anything in the reference book published by the Lumbermen's Credit Association indicating the method in which buyers handle or treat shippers, that you don't find in the Dun book?

Mr. O'Connor: Objected to as immaterial and because the book is the best evidence of its contents and character.

A Yes, sir.

Q What is it? A They have a "33", a kind of notation in their book which is not found in the Dun book and is of great aid to a seller, inasmuch as it gives the disposition of the buyer.

Q State whether or not you do also secure special

1389 reports from the Lumbermen's Credit Association in particular cases?

Mr. O'Connor: Objected to as immaterial and leading.

A We do.

Q In your experience with this reference book and the special reports furnished by the Lumbermen's Credit Association what have you found with reference to their accuracy and reliability?

Mr. O'Connor: Objected to as immaterial and because it calls for a conclusion of the witness.

Q As compared with the other agencies and reports? A We have found them very accurate and I think more so than any of the other agencies.

Q Do you know how the Lumbermen's Credit Association book and reports is regarded in the lumber trade as authority on lumber credits?

Mr. O'Connor: Objected to as immaterial and because it calls for the witness' conclusion.

A I do.

Q Will you please state how it is regarded?

Mr. O'Connor: Same objections.

A It is regarded in the lumber trade generally as an authority on lumber ratings, lumber and kindred pursuits.

Cross-Examination by Mr. O'Connor.

Q How long have you occupied the position of the credit man of the Edward Hines Lumber Company? A Eleven years.

1390 Q How long have you used R. G. Dun & Company's reference book in your business? A Eleven years. O, in our business, I should think about three years.

Q Are you using it now? A Yes, sir.

Q You have been using it during the last three years? A Yes, sir.

Q For what purpose do you use it? A As a reference book.

Q For what purpose? A For the purpose of ascertaining the ratings of people.

Q Their ratings as to what, in what particular? A Their rating as to capital and credit rating.

Q What do you mean by a credit rating? A Your book, on the first page here—

Q No, I am asking you, please don't refer to the book Mr. Wiehe, I am asking you what do you mean by credit rating. You say you refer to it to ascertain a party's credit rating? A As to whether a man is rated as high, fair or medium.

Q Well, what would high credit indicate? A Indicate in what manner?

Q I am asking you what would it indicate to your mind? A Why, indicate that a man was good, I should think.

Q In what particular, in what respect? A Good in credit rating.

1391 Q What do you mean by credit rating? A Why, that his standing or purchasing power in the community was good, should think that is what it would mean.

Q Would it influence your mind if you were trying to ascertain his mode of, method of paying his bills? A No, I don't think it would, I don't think that would have anything to do with it. I have seen men in Dun's book rated very high who didn't pay their bills at all.

Mr. O'Connor: I ask the last answer be stricken out as not responsive.

Q If you wanted to ascertain whether a party paid his bills or not, would you refer to R. G. Dun & Company's book at all? A Well, I don't think R. G. Dun's book would give me that information.

Q I am asking you, what would you do under the circumstances if you wanted to ascertain whether a party was likely to pay his bill or not, would you refer to R. G. Dun & Company's book? A Not for that purpose, no.

Q Would you refer to it in ascertaining that question, solving that problem? A Not for that problem alone, no, sir.

Q But you would refer to R. G. Dun & Company's book to ascertain the man's standing? A Yes, sir.

Q Financial standing? A Yes, sir.

Q And not only the amount of his worth, but also his standing or reputation, or the extent to which credit was given to him by others? A Yes, sir.

1392 Q If you wanted to know about a party's capital rating to what books would you refer? A Well, we might refer to all the books and might only refer to one, don't always refer to all the books. If it was a man in the lumber line who is a lumber dealer entirely and only, we would refer to Clancy's book. If he was a general man, outside of the lumber line why we would refer to Dun and Bradstreet.

Q But if you wanted to ascertain a man's standing, would you be satisfied with Clancy's book alone? A We would if he was a lumber dealer.

Q Then do I understand that whenever you are investigating the financial standing of a lumber dealer you referred

to Clancy's book alone, although you had R. G. Dun & Company's book? A Why, I think in ninety per cent. of the cases we would, yes.

Q Never refer to R. G. Dun & Company's book, although you had it?

Mr. Atwood: He didn't say that.

A No.

Q I am asking whether he would. A Certainly, we might look at Dun's book, good many cases.

Q What was your usual custom Mr. Wiehe, in investigating the financial standing— A Well, I will tell you.

1393 Q —of parties whom you were investigating? A About eighty per cent. of the lumber dealers I know their standing.

Q Without referring to any book? A Without referring to any book. But I might refer to—I would turn to clancy's book, see how high they were rated. I know their general reputation, their paying qualities and so on, for that reason I wouldn't have much occasion to refer to Dun's book. And sometimes get an inquiry from a man. or an order from a man and I would refer to Dun's book or Bradstreet's book,—refer to the three books. It is hard to say just what you would do.

Q But, Mr. Wiehe, if you wanted to ascertain the financial standing of a party about whom you knew nothing, to what books would you refer? A Why, I would refer to Clancy's book and to the other two books that I had.

Q You would secure all the information within your power? A Yes, sir.

1394 WILLIAM SCOTT KEITH called as a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Pease.

Q Please state your name? A William Scott Keith.

Q What is your business? A Lumberman; hard wood lumber.

Q With what concern are you connected? A With the Keith Lumber Company.

Q Where is their place of business? A Fourteenth and Wood streets, Chicago.

Q How long have you been in the hard wood lumber business? A Twenty-five years or more.

Q Is the Keith Lumber Company a subscriber to the reference book published by Dun & Company?

Mr. O'Connor: Objected to as immaterial.

A Yes.

Q And how long has it been?

Mr. O'Connor: Same objection.

A Subscriber to Dun's?

Q Yes. A Probably ten years.

Q And is the company also a subscriber to the reference book published by the Lumbermen's Credit Association?

Mr. O'Connor: Same objection.

A Yes.

Q How long has it been?

1395 Mr. O'Connor: Same objection.

A Twenty years or more.

Q You also subscribe to Bradstreet's?

Mr. O'Connor: Same objection.

A Yes.

Q Mr. Keith, please state whether or not the reference book of the Lumbermen's Credit Association answers any different need or serves any different purpose in the lumber business than the Dun or Bradstreet book?

Mr. O'Connor: Objected to as immaterial and because it calls for the witness' conclusion.

A Yes, we consider it so.

Q What uses do you make of the reference book published by the Lumbermen's Credit Association?

Mr. O'Connor: Objected to because it is immaterial.

A What uses do we make of it?

Q Yes. A For the purpose of establishing credit in the lumber business.

Q And for what other purposes?

Mr. O'Connor: Same objection.

A We use it in our business to know the standing of people in the lumber trade and for their credit, for the purpose of selling them goods.

Q What if any use do you make of the freight rate columns?

Mr. O'Connor: Objected to as immaterial and leading.

A We use them very little.

1396 Q Or of the blank space for making notations of changes?

Mr. O'Connor: Same objection.

A We use them very little.

Q And do you use it as a guide in mailing,—mailing list?

Mr. O'Connor: Objected to as immaterial and leading.

A Yes, we often do that.

Q What is there, if anything, about the classification or arrangement of the Lumbermen's Credit book that makes it of particular worth in your business?

Mr. O'Connor: Objected to as immaterial and leading and because the book is the best evidence of its contents.

A The book, we look upon it as adapted to the lumber trade, almost a specialist, as you would say. We can gather quickly the information that we want in our trade, because it is a lumber trade commercial agency.

Q What is there in reference to the classification or arrangement of the book that distinguishes it from the Dun book or Bradstreet book, aside from the fact that it is confined to the lumber trade?

Mr. O'Connor: Objected to as immaterial and as leading and because the books are the best evidence of their contents and character.

A The rating is different, it is original.

Q In what respects?

Mr. O'Connor: Same objections.

A There are numbers there to those ratings that we 1397 are more familiar with as we use it more.

Q In the Clancy book?

Mr. O'Connor: Same objections.

A Yes, in the lumber association's book,—Lumber Credit Association book.

Q And what about the difference in credit and pay ratings?

Mr. O'Connor: Same objections.

A The difference?

Q Between the two books? A Well, I am hardly prepared to answer that. I don't think there is very much difference between the two books. It is simply a lumber book, we go to it more, we are more familiar with it, and rather rely upon it more.

Q What does the Lumbermen's Credit Association book show with reference to payment, manner or method of payment?

Mr. O'Connor: Objected to as immaterial and leading and

because the book itself is the best evidence of its contents and character.

A The Lumbermen's Credit book is confined to lumber almost entirely. If it was Bradstreet's book, isn't quite as comprehensive; it might be that a man was engaged in lumber and something else, that we would know in the Lumbermen's book and we wouldn't know it in the Bradstreet's.

Q Or Dun's?

Mr. O'Connor: Same objections.

A Or Dun's, rather. We take all three of them.

Q You mean because of the difference in classification?

1398 Mr. O'Connor: Objected to as immaterial and leading and because the book is the best evidence of its contents and character.

A Yes.

Q Is the classification in the Lumbermen's Credit Association book of any value or advantage over that given in the Dun book or Bradstreet?

Mr. O'Connor: Objected to as immaterial and because the question calls for a conclusion of the witness, and because the question is leading and because the book is the best evidence of its contents and character?

A Yes, we think it is.

Q Wherein?

Mr. O'Connor: Same objections.

A Simply as confined to lumber,—more in detail.

Q Do you know how the Lumbermen's Credit Association's book is regarded in the lumber trade with reference to accuracy and reliability as to lumber credits?

Mr. O'Connor: Objected to as immaterial and as leading and because it calls for the conclusion of the witness and because the book is the best evidence of its contents.

A Yes, I am familiar with the value of the Lumbermen's Credit Association's book; we look upon it as being original and very trustworthy, and their reports in detail we look upon them as being conservative and better than either of the other books, and always have.

1399 Mr. O'Connor: I move to strike out the portion of the witness' answer explaining what he or his firm have done as not responsive to the question, in addition to the objections already made to the question.

Q Mr. Keith, what experience have you had with reference to inquires by representatives of the Lumbermen's Credit

Association as to the standing and methods of pay of men in the lumber business as compared with other agencies?

Mr. O'Connor: Objected to as immaterial and because it calls for the witness' conclusion and because it is leading.

A Our experience is that the Lumbermen's Credit Association as a representative in our office very frequently, I should say three or four times a month, Dun's probably three or four times a year, Bradstreet's not at all.

Q And for what purpose, or in connection with what matters?

Mr. O'Connor: Same objections.

A For information for the purpose of credit for those we deal with.

Cross-Examination by Mr. O'Connor.

Q Who does the credit work in your firm, Mr. Keith? A Mr. Bartelme, our Vice President, largely.

Q How long has he been credit man of your firm? A Probably three or four years. I did it before that.

Q Have you done any of the credit work of your firm 1400 during the last three or four years? A Very little. I am doing more or less all the time, but very little the last three or four years.

Q Is your credit man in town now? A Yes.

Q When he wants to ascertain—when your firm wants to ascertain the financial standing of a party to what books does it refer? A In the lumber trade, we first refer to the Lumbermen's Credit Association, following that up with Dun's and Bradstreet's in the order named.

Q You refer to all of them? A We refer to all of them. Yes.

Q If you want to ascertain a party's credit to what would you refer? A Well, I answered that.

Q His credit, as distinguished from his capital rating, as to the amount, value of his property? A His credit as distinguished from his capital rating?

Q Yes. A We refer to the Lumbermen's, if it is in the lumber business.

Q If you want to ascertain his credit with others would you refer to the Lumbermen's book alone? A No; no, I should refer to the Lumbermen's and Dun's.

Q You would refer to all the books? A Refer to all the books; all three of them.

Q You have already stated, I believe, that if you wanted to ascertain his capital rating, his worth, you would refer
1401 to all the books? A Well, the capital rating of the Lumbermen's Association doesn't go beyond one hundred thousand, but that is sufficient, if I wanted to go beyond that I should take Dun's.

Q If the party was worth less than $100,000 to what books would you refer? A If he is in the lumber trade I should refer to the Lumbermen's Credit Association.

Q Would you refer to that alone if you wanted to ascertain how much a man was worth? A Well, that depends. Often times we are satisfied with the Lumbermen's Credit Association, and then again we are not, and we follow that right up with the other books, most always with all the books; but very frequently we take that book alone for the lumber business.

Q When you rely upon that book alone, is it in cases where you have already some knowledge of the party? A No, I don't know—

Q If you knew nothing whatever about a party and wanted to ascertain how much he was worth would you rely upon one book alone? A No, I shouldn't.

Q You would refer to all? A I would refer to all.

Re-direct Examination by Mr. Pease.

Q Mr. Keith, in looking up a man engaged in the lumber business, lumber buyers, in case of a difference of capital
1402 ratings, or variance between the Dun book and the Lumbermen's Credit Association book, which book would you rely upon?

Mr. O'Connor: Objected to as immaterial and calling for the witness' conclusion.

A If a lumber man, I should rely upon the Lumbermen's Credit Association book, that is a specialist, now I am talking of the lumber business.

Q That is what I am asking you. A Yes.

Q In your experience in fixing credits what have you found with reference to the capital ratings and pay ratings of the Lumbermen's Credit Association as compared with the capital and credit ratings of R. G. Dun & Company, as reliable and accurate?

Mr. O'Connor: Objected to as immaterial and because it calls for the witness' conclusion.

A You mean a report, do you?

Q No, I am asking you now with reference to the ratings contained in the book. A We look upon them as very reliable, they are conservative, extremely so.

Q Which? A The Lumbermen's Association book; we have always looked upon their reports and credits as being conservative, sometimes we think too much so.

Q Has that been your experience during the time you
1403 have used the book?

Mr. O'Connor: Same objection.

A That is the experience in our office and always has been. If we wanted really to sell a man we should look at the Lumbermen's Credit Association, which is conservative, now mind you, that we wanted to sell him, it would be more favorable in Dun's report and much more in Bradstreet's, that is the way that they stand with our office. We should sell him on that book if we wanted to sell him.

Q Which book? A This Dun's book, if we wanted to sell him. The other report would keep us out of selling him. We sometimes want to do more business, we have got some stocks on hand of lumber than we want to move, we are overstocked, or something.

Q You say the Dun book is more favorable? A Yes, we look upon it as more so.

Q In what respect?

Mr. O'Connor: Same objection.

A It gives a man a higher rating and justifies us to credit him.

Q Gives him a higher rating than what book? A Than the Lumbermen's Association.

Q In extending credit to lumber buyers which of the three books do you regard as the more reliable?

Mr. O'Connor: Objected to as immaterial and calling for the witness' conclusion.

1404 A They are both reliable.

Q Well, more conservative, then. A The Lumbermen's Credit, as I have stated, and their reports are more conservative, that is the way they stand in our office, they are more conservative than either of the other two, this one more than Bradstreet's.

Q This one, referring to Dun's? A Referring to Dun's, I mean more than Bradstreet's.

Re-cross Examination by Mr. O'Connor.

Q Mr. Keith you say that whenever you want to sell a party you refer to Dun's book; would you sell a party on Dun's rating if you didn't believe Dun's rating to be correct? A No, I wouldn't.

Q Then when you say that the Lumbermen's Credit Association's rating is sometimes too conservative, you mean that it is inclined to under-estimate a party's real worth? A Well, you might state it that way; we call it conservative, very.

Re-direct Examination by Mr. Pease.

Q What do you mean when you say, when you want to sell a party you refer to the Dun rating, or act upon the Dun rating?

Mr. O'Connor: I object to that as immaterial and because it is going over the same ground the second time, the witness having already explained what he meant.

1405 A What I mean by that, when we want to sell a man anything, is, we have got something that we want to sell, we are overstocked.

Q Well, you always want to sell, don't you? A We always want to sell.

Q Now, just what do you mean, I don't think you have made that quite clear. A Well, take quartered oak, for instance, which is a salable article, we can sell it always, we don't cut the price on it, but we have a lot of culled quartered oak that has been standing there, nobody wants it, and we want to sell it.

Q You mean you are anxious to sell it? A Certainly, I want to sell it, that means I am anxious to sell it.

Q Willing to take a little risk?

Mr. O'Connor: Object to the question as leading, as well as immaterial.

Q Certainly, willing to take a little risk.

Q Have you ever made any losses on deals where Clancy's ratings given a party were conservative and you have sold on the Dun rating?

Mr. O'Connor: Objected to as immaterial.

A I couldn't answer that, I would have to refer to my books to answer that.

of
pe.

1406 G. J. POPE called as a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Pease.

Q Please state your name? A G. J. Pope.
Q What business are you engaged in? A Lumber business.
Q With whom, if any one? A D. S. Pate Lumber Company.
Q How long have you been engaged in the lumber business? A Since 1882; April, 1882.
Q What position do you hold in the D. S. Pate Lumber Company? A I am Vice President of the Company.
Q What are your duties? A I have general supervision of the office, handle the credits and certain amount of the sales; other incidental duties.
Q Do you use the reference book published by the Lumbermen's Credit Association?
Mr. O'Connor: Objected to as immaterial.
A I do.
Q How long have you used that book?
Mr. O'Connor: Same objection.
A It was in use prior to 1882, I don't know how much longer.
Q I mean how long have you used it personally?
Mr. O'Connor: Same objection.
A O, as credit man, since 1892.
Q And have you used the Dun reference book during
1407 that time or any part of that time?
Mr. O'Connor: Same objection.
A We have used the Dun book for about six years.
Q Are you using it now?
Mr. O'Connor: Same objection.
A We are.
Q What particular line of lumber is the D. S. Pate Lumber Company handling?
Mr. O'Connor: Objected to as immaterial.
A Yellow pine.
Q What amount are you handling annually, about?
Mr. O'Connor: Same objection.
A Something over fifty million feet annually.

Q What if any purpose or need does the reference book of the Lumbermen's Credit Association meet in your business different from the Dun book?

Mr. O'Connor: Objected to as immaterial, the question is leading, and because the books themselves are the best evidence of their character.

A We use it not only as a credit guide, but also as a buying guide; furthermore, to ascertain the names of users of our material.

Q What is there, if anything, in its arrangement or classification that makes it particularly useful or beneficial for those purposes over the Dun book?

Mr. O'Connor: Objected to as immaterial, because it
1408 is leading, because it calls for the conclusion of the witness and because the books themselves are the best evidence of their character and contents.

A The book published by the Lumbermen's Credit Association we regard as a book, if I might use the word, of specialties, it gives information which is of use in our line, and such information only. It gives us the name of buyers, it also gives us the class of material that the saw mills manufacture, making a distinction between the hard wood mills, the white pine mills and the yellow pine. Do you wish answer also as to the credit?

Q I will ask you that. In what particular are these features which you mentioned of special benefit or use in the lumber business?

Mr. O'Connor: Same objections.

A The information in the Lumbermen's Credit Association's book is classified. In the Dun book it is general. We have no way, in looking in the Dun book, to know whether a man is manufacturing hard wood or yellow pine.

Q Now then, with reference to the matter of extending credit, what use do you make of the Lumbermen's Credit Association's book in that connection?

Mr. O'Connor: Same objections.

A We use the Lumbermen's Credit Association's book almost entirely in arriving at a basis of credit for men en-
gaged in the lumber business. We use the Dun book
1409 when we wish to get reports on large manufacturing institutions that may wish to buy one bill of lumber, or general contractors who operate in a large way. The red book is used by us entirely in arriving at a basis for credit on all lumber yard dealers throughout the smaller cities.

Q By the red book you mean the Lumbermen's Credit Association's book? A The Lumbermen's Credit Association's book.

Q What consideration do you give the pay ratings contained in the Lumbermen's Credit Association's book in extending credit, if any?

Mr. O'Connor: Objected to as immaterial, because it is leading, because it calls for the conclusion of the witness.

A It is our chief guide in extending credit.

Q As between the pay rating in the Lumbermen's Credit Association book and the credit rating in the Dun book which do you consider is the more important or reliable in extending credit?

Mr. O'Connor: Objected to as immaterial and because it calls for the conclusion of the witness.

Q We consider the pay rating in the Lumbermen's Credit Association book the more reliable.

Q Why?

Mr. O'Connor: Same objections.

A In my opinion it is made up of the experience of the . trade of any particular concern in paying their bills.

1410 Q Independent of their capital?

Mr. O'Connor: Same objections.

A Independent of their capital rating.

Q What do you understand Dun's credit rating to be based upon?

Mr. O'Connor: Same objections.

A To a certain extent their custom in paying their bills, but more largely in reference to the capital used in their business.

Q Their capital worth? A Their capital worth, yes.

Q What if any influence in extending credits has the rating "33" as used by the Lumbermen's Credit Association?

Mr. O'Connor: Objected to as immaterial and because it calls for the witness' conclusion.

A The rating "33" always causes us to get a special report, written up to date, we then form our opinion as to whether or not the man is entitled to that rating, and if in our opinion the man has earned the rating by his past actions we refuse to ship him without some definite and distinct understanding as to his taking the material that we ship.

Q Is there any rating in the Dun book or key which indi-

cates this character of information in assisting one in extending credits? Deposit G. J.

Mr. O'Connor: Objected to as immaterial, as calling for the witness' conclusion, and because the books themselves

1411 are the best evidence of their contents.

A I have never seen any.

Q In extending credits which do you regard as the more important, the capital rating or the habit or method of pay as indicated by the pay rating?

Mr. O'Connor: Objected to as immaterial and calling for the witness' conclusion.

A We consider the pay rating as more important than the capital rating.

Q What if any information is there in the Lumbermen's Credit reference book, of assistance in selling lumber with reference to the headquarters of line yards, not given in the Dun book?

Mr. O'Connor: Objected to as immaterial and leading and because the books themselves are the best evidence of their contents.

A In case of line yards, in the Lumbermen's Credit Association book it states where the buying office or head office is. This is not found in the Dun book.

Q Do you use the freight rate columns in the Lumbermen's Credit Association book?

Mr. O'Connor: Objected to as immaterial.

A Not at the present time.

Q Do you make any use of the blank margins?

Mr. O'Connor: Objected to as immaterial.

A We do. The semi-weekly reports are always

1412 posted in the margin of the Lumbermen's Credit Association book and we use that as a guide.

Q In your experience with the information contained in the reference book of the Lumbermen's Credit Association and its reports in extending credits, have you found them accurate and reliable?

Mr. O'Connor: Objected to as immaterial, calling for a conclusion of the witness.

A We have.

Q To what extent do you use and have you used in the past, special reports from the Lumbermen's Credit Association?

Mr. O'Connor: Objected to as immaterial.

A I don't quite understand your question.

of
pe.

Q I say, to what extent have you had or used special reports from the Lumbermen's Credit Association? A We have used them whenever occasion has required any special report.

Q Do you know how the reference book and special reports of the Lumbermen's Credit Association are regarded in the lumber trade, as an authority on lumber credits?

Mr. O'Connor: Objected to as immaterial and calling for a conclusion of the witness, and as leading.

A My experience and information would lead me to state that they are regarded as the best authority taken as a whole, on lumber credits and ratings.

Mr. O'Connor: Objected to, and move that it be
1413 stricken out also, on the ground that it is mere hear-
say testimony.

Cross-Examination by Mr. O'Connor.

Q Have you ever worked for R. G. Dun & Company? A I never have.

Q Have you been in their office and seen them at work? A I have.

Q Do you know how they arrive at their estimates, at their ratings? A The methods?

Q Yes. A No.

Q Then what do you mean when you undertake to testify as to how they arrived at their credit ratings?

Mr. Pease: I object to that as immaterial.

A From looking over their reports after they had arrived at our office, comparing them with the other reports and with our own information as to the institutions reported on.

Q Have you ever applied to R. G. Dun & Company for any special reports? A We have.

Q When you have wanted to ascertain the rating of a party to what books did you refer? A Usually to the Lumbermen's Credit Association book, and in some instances to the R. G. Dun & Company book, as supplementary information.

Q In what particular cases did you refer to R. G.
1414 Dun & Company's book? A I can't name them all. I
know one, the Great Western Glass Company, at Ottawa, Illinois.

Q I mean in what class of cases? A Where there was a pos-

sibility of extending a large line of credit to some one institution, or when we wanted a report on some heavy contractor or some manufacturing institution which required building material for some new building and were not lumber consumers, and so would not be in the Lumbermen's Credit Association's book. Depo G.

Q Have you never referred to R. G. Dun & Company's book in any case where the party was rated in the Lumbermen's Credit Association's book and in R. G. Dun & Company's book? A We have from time to time very often, in fact.

Q You referred to both books in some cases? A Very often.

Re-direct Examination by Mr. Pease.

Q What if any particular reason have you for referring to the Dun book in extending credit?

Mr. O'Connor: Objected to as immaterial.

A We carry credit insurance with the American Credit Indemnity Company; under our form of bond we agree to accept the rating in the R. G. Dun & Company book. We have found that R. G. Dun & Company were more liberal. Furthermore, their book is issued three times per year, while the changes in the Lumbermen's Credit Association book 1415 are liable to change weekly and it gives us a much better opportunity to sell our trade and be covered by our form of insurance policy.

Mr. O'Connor: What does? You refer to "it", what do you mean, R. G. Dun & Company's book?

A And having our policy covered by R. G. Dun & Company's rating.

Mr. O'Connor: Will you please answer my question, Mr. Pope. You say "it" gives, what does "it" mean, to what does it refer?

Mr. Pease: That appears from the answer.

A It refers to having our policy covered by the R. G. Dun & Company ratings.

Mr. Pease: Now you may finish your answer.

A I don't know where I ended, I will have to—

Answer read.

A That is all.

Re-Cross Examination by Mr. O'Connor.

Q Since you answered my last question on the cross examination you have left this room, have you not? A I have.
Q You went into the hall and had a talk with Mr. Stadden? A I did.
Q Of the Lumbermen's Credit Association, and did you have a talk with Mr. Clancy? A I did.
Q How often is R. G. Dun & Company's book issued?
1416 A We get it twice a year. I have been informed by R. G. Dun & Company's men that it is issued three times a year.
Q You don't know yourself, how often it is issued? A No, I don't know how often they print a book.
Q You speak about correction sheets issued by the Lumbermen's Credit Association weekly? A Semi-weekly.
Q Don't you know R. G. Dun & Company issue correction sheets daily? A I do not regard them as correction sheets.
Q Answer my question, don't they issue what purports to be a correction sheet daily? A No.
Q What is it? A It is a sheet containing certain information.
Q What is it called? A I don't know.
Q Isn't the name of it the correction sheet? A I can't answer without looking at one.
Q Do you take it? A We do.
Q How long have you used it? A About six years.
Q And don't remember its name? A I couldn't state on oath that its name was the correction sheet.
Q Can you state on oath what its name is? A I can not.
Q Don't they issue their book four times a year, their general book? A I have testified to that fact, we get it twice a year.
Q I ask you, don't they issue it four times a year?
1417 A I don't know.
Q You say that you rely upon R. G. Dun & Company's book in certain cases?
Mr. Pease: Didn't say that.
A I don't remember of saying it.
Q You refer to R. G. Dun & Company's book in certain cases? A We do.
Q What did you say about the bond, the condition of the

bond to which you referred with reference to R. G. Dun & Company's book?

Mr. Pease: I object, the record shows what he stated.

A The bond is issued at a certain price, based on R. G. Dun & Company's ratings.

Q What do you mean by its being based upon R. G. Dun & Company's ratings? A We ask that R. G. Dun & Company be used in our bond, they give us the choice of Dun, Bradstreet, the Lumbermen's Credit Association book, or any other commercial agency book which reports people to whom we would sell, and we chose the Dun book.

Q Now what is the condition of that bond. What is this, a guaranty company? A It is.

Q A guarantee of credits? A It is.

Q What is the nature of the bond, or of the insurance?

A We pay so much per year based on a certain amount of sales, we are compelled to stand an initial loss of one
1418 fifth of one per cent. of our sales, after that we are protected by the bond which we hold to the extent of $10,000 with a limit of $5000 in any one loss. We can collect under our bond a total of $10,000 and not more than $5000 in any one loss.

Q And not more than $10,000 altogether? A Altogether.

Re-direct Examination by Mr. Pease.

Q Why did you select the R. G. Dun & Company book under this bond in preference to the Lumbermen's Credit book?

Mr. O'Connor: Objected to as immaterial.

A I considered that they are more liberal in their ratings and that furthermore they are not so liable to change, to know of any change in the condition in our particular line of business, and we would thus be enabled to be protected under our bond in some instances where we would not be under the Lumbermen's Credit Association book if that was used as a basis.

Q What do you mean by more liberal, Mr. Pope?

Mr. O'Connor: Objected to as immaterial and calling for the witness' conclusion.

A I mean that we would be much more liable to find a high credit rating in the Dun book than we would be in the Lumbermen's Credit Association book.

Q How about the capital ratings?

Mr. O'Connor: Objected to as immaterial and calling 1419 for the witness' conclusion.

Q Would they be more liberal, that is higher, also?

Mr. O'Connor: Same objections and leading.

A I have not paid so mich attention to to them and am unable to answer definitely.

Q Do these sheets furnished by R. G. Dun & Company make any changes in the capital ratings contained in their reference book?

Mr. O'Connor: Objected to as immaterial, because the sheets are the best evidence of their contents.

A I believe that I have occasionally noticed the words "rating withdrawn", but it is only occasionally that this occurs, in fact I wouldn't state definitely that it does occur, as a general thing it does not change either their capital or credit rating.

By Mr. O'Connor:

Q Would you sell a party upon R. G. Dun & Company's rating if you didn't believe R. G. Dun & Company's rating to be correct?

Mr. Pease: I object to that.

A Yes, we are covered by our credit insurance bond.

Q It would be immaterial to you then, whether you lost or not? A It would beyond a certain point; after we have lost a certain amount of money it is then immaterial to us.

Q What is that point? A $1500.

1420 Q Then up to the amount of $1500 you are indifferent whether your sale will be a loss or not, are you? A We are not indifferent, but we take a chance on it.

Q You make no investigation except by referring to R. G. Dun & Company's book to ascertain what the party is worth? A O, yes, we look at the Clancy book and then if he is quoted "33" we wouldn't ship him.

Q But as to the capital rating you rely upon R. G. Dun & Company's book without making further investigation, do you? A We do to see whether or not we are covered by our bond, capital and credit rating, in the Dun book.

Q What do you mean when you say, to see that you are covered by your bond? A Just exactly what I say.

Q Please explain it a little more clearly. A There are some people in the Dun book with whom we are not covered, I look to see if the man—

Q Why are you not covered? A Because sometimes they have no credit rating. Depo G.

Q If a party has a credit rating in Dun & Company's book do you rely upon that rating alone without making further inquiry? A We do to see whether or not we are covered by our bond.

Q If you find a party rated in R. G. Dun & Company's book and he is one of the parties—if he is rated in R. G. Dun &
Company's book he is covered by your bond, isn't he?
1421 A If he has certain ratings we are covered.

Q What ratings? (Witness refers to book). Explain generally Mr. Pope, I don't care to go into detail. A They have to have over a certain amount. They have to have the first and second credit rating, beyond that—they have to have the third credit rating. None of our people are covered that have the fourth credit rating.

Q If he is a party who is covered by your bond you rely solely upon R. G. Dun & Company's book, do you? A As to whether or not we sell?

Q Yes. A No, it depends also upon the amount that he wants to buy and what our prospective profit is. If he wishes to buy one car of lumber we wouldn't fool with him. If he wishes to buy a large amount where there is an opportunity of making a large profit we would sell him.

Q What would you call a large amount? A Where there was a chance to make a profit of $1000 or over.

Q What would be the amount of sales on which you would make that amount of profit? A It is a rather leading question, sir, and almost impossible to answer directly.

Q Give us some idea. I don't care to pry into your business. Give us some idea.

Mr. Pease: I object to the question.

A It varies. Our past business has shown approxi-
1422 mately a profit of ten per cent. Sometimes we make
thirty and sometimes we make five.

Q Then if a party wanted to buy a large amount and he was covered by your bond, you would rely upon R. G. Dun & Company's book alone? A I would. We are selling such a man to-day, shipping him to-day.

Mr. Pease: Would you rely on the Dun book as to a party not covered by your bond in such a case?

Mr. O'Connor: Objected to as immaterial.

A No, we would not.

By Mr. O'Connor:

Q Would you refer to the Dun book in such a case where a party was not covered by your bond, if you wanted to ascertain the party's financial standing? A We would have to refer to the Dun book to see whether or not he was covered.

Q Would you refer to the Dun book for the purpose of ascertaining his capital or credit rating?

Mr. Pease: As a basis of extending credit, I suppose you mean.

Mr. O'Connor: Mr. Pope understands my question.

Q If you wanted to ascertain the financial standing of the party, Mr. Pope, about whom you knew nothing, would you refer to R. G. Dun & Company's book at all? A We would refer to every source of information that lay at hand.

1423 GEORGE H. HOLT called as a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Pease.

Q Please state your name? A George H. Holt.

Q What line of business are you engaged in? A Lumber manufacturing.

Q Where? A Our mills are at Oconto, Wisconsin, and at various other points, Red Cliff, Wisconsin, Duluth, Minnesota.

Q Where is your office? A My personal office is in Chicago; have several offices.

Q What firm or concern are you connected with? A I am President of the Holt Lumber Company, also the American Lumber Company.

Q What is the extent or amount of business annually, in feet, I mean?

Mr. O'Connor: Objected to as immaterial.

A We handled this year about eighty millions.

Q What kind of lumber?

Mr. O'Connor: Objected to as immaterial.

A Pine and hemlock.

Q Is the Holt Lumber Company a subscriber to the reference book published by R. G. Dun & Company?

Mr. O'Connor: Objected to as immaterial.

1424 A I think not now.

Is the American Lumber Company?

Mr. O'Connor: Same objection.
A No, sir.
Q Were they formerly?
Mr. O'Connor: Same objection.
Q Was the Holt Lumber Company a subscriber to the Dun reference book at any time?
Mr. O'Connor: Objected to as immaterial.
A Yes, sir.
Q Down to how late?
Mr. O'Connor: Same objection.
A I don't remember the date.
Q Is the Holt Lumber Company a subscriber to the reference book published by the Lumbermen's Credit Association?
Mr. O'Connor: Same objection.
A I think so, yes, sir.
Q Does the Lumbermen's Credit Association's reference book fill any need, or serve any purpose in the lumber trade which the Dun book did not?
Mr. O'Connor: Objected to as immaterial and because it calls for the witness' conclusion and because the books are themselves the best evidence of their character.
Q In your business I mean, of course. A I think so.
Q What use or uses did the Holt Lumber Company
1425 make,—do you make of the Lumbermen's Credit Association's book that you didn't make of the other book when you subscribed to both books?
Mr. O'Connor: Objected to as immaterial.
A It gave us information which the other book didn't give.
Q What character?
Mr. O'Connor: Same objection, the books are the best evidence of their contents.
A Various classes. Well, in the first place it had a list of names which we found to be more satisfactory, more trustworthy, more up to date. Information with reference to the classification of lumbermen in their—according to their various needs and our relation to them, we found it more convenient and useful, and various lines of information which it gave, such as the methods of payment and the fact that a man was what you call a kicker or not, and whether he made unjust claims for deduction. Classification much more satisfactory to us; much more convenient to get at the information we wanted. Possibly other things.

Q What if any use did you make of the freight rate columns?

Mr. O'Connor: Same objections.

A We found that method of keeping track of our freights for most of the time a most convenient way.

Q What if any use did you make of the space on the margin of the page?

Mr. O'Connor: Same objections.

1426 A We entered in that the corrections from time to time as they occurred, of credit ratings, or information concerning men, customers.

Q When did the Holt Lumber discontinue the service of the Dun book?

Mr. O'Connor: Objected to as immaterial.

A I answered before that I don't think I can tell just when.

Q What was your reason for doing so?

Mr. O'Connor: Objected to as immaterial.

A Well, there was more than one reason. We were dissatisfied with the service that we got from the Dun Company, and didn't feel that we were getting the worth of our money that we cared to continue the service at that time.

Q In your experience with the two books which did you find to meet your requirements the best?

Mr. O'Connor: Objected to as immaterial and calls for the witness' conclusion.

A You are speaking now as between the Dun book—

Q Dun book and the Lumbermen's Credit book, yes. A The Lumbermen's credit.

Cross-Examination by Mr. O'Connor.

Q How long did your concern use R. G. Dun & Company's book altogether, Mr. Holt? A As I can't remember the
1427 time when we ceased using it, I can't tell you definitely, but several years; number of years.

Q You used it altogeher several years, or you quit several years ago? A We used it in connection with this and Bradstreet's and others.

Q How long did you use it altogether, R. G. Dun & Company's? A I can't give you the number of years. A number of years.

Q You ceased to use it several years ago, do I understand you? A Yes, sir.

Q Did you have any trouble with R. G. Dun & Company? A We had a great deal of trouble getting the class of information we wanted in time, and the information we received was unsatisfactory.

Q You had a misunderstanding with them, did you? A I don't know that we have had any misunderstanding.

Q Your concern? A I don't know that we had any misunderstanding with them. I think we understand each other very well.

Q There is a little ill feeling between the two firms, is there? A Not that I know of. As between one employe of the Dun Company and ourselves, we objected to the—there was ill feeling in that respect, it doesn't have anything to do with the reporting department, however.

Q What other book do you now take besides the Lumbermen's Credit Association book? A We take the Foster Commercial Agency book.

1428 Q Any other? A The Wholesale Manufacturers, can't remember the name of that association. National Wholesale Lumber Dealers' Association.

Q Any other? A Not that I remember, in that company. I use the Dun book in other cases and at other points, and I am not sure about other books in connection with the Holt Lumber Company. I think not, I think that is all.

Q Does your concern use R. G. Dun & Company's book at any of its points? A No, sir, not in the lumber business.

Q Is your firm engaged in any other business? A Personally I am engaged in a number of other things.

Q In what other lines of business?

Mr. Pease: I object to that as not cross examination and immaterial, and relating to personal matters.

Q In what other lines of business?

Mr. Pease: You needn't answer if you prefer not to.

A I have no particular objection to answering.

Mr. Pease: All right.

Q I am not trying to pry into your business, to learn in what lines of business you have investments, Mr. Holt, but are you connected with any other concerns besides the Holt Lumber Company? A Yes, sir.

Q As a member of the firm? A As an officer, you mean?

1429 Q Yes, sir. A Yes, sir.

Q With what other concerns are you connected? A

You speak now with reference to the using of commercial agency books?

Q Yes. A I am President of the Policy Holders Union, as one.

Q Are you connected with any other business houses? A My interest in the business houses is not as an official in other houses, though I have large interests in other things which use this book.

Q Does the Policy Holders Union use R. G. Dun & Company's book? A No, sir.

Re-direct Examination by Mr. Pease.

Q Did this difficulty with the employe of Dun & Company have anything to do with influencing the Lumber Company in discontinuing the subscription to the Dun book?

Mr. O'Connor: Objected to as immaterial and calling for the witness' conclusion.

A I presume it had something to do with it. It wouldn't have influenced to the extent of our excluding the book if we had thought it was worth while to keep it.

The taking of further testimony is adjourned to Thursday, January 15, 1903, at 2 o'clock P. M.

1430 January 15, 1903. 2 o'clock P. M.

EDWIN E. HOOPER called as a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Pease.

Q Please state your name? A My name is Edwin E. Hooper, Secretary of the Lumbermen's Association of Chicago.

Q How long have you held that position? A Fifteen years.

Q Are you familiar with the reference book published by the Lumbermen's Credit Association? A The Clancy book?

Q Yes. A Yes, sir.

Q How long have you been familiar with that book?

Mr. O'Connor: Objected to as immaterial.

A Ever since I have been Secretary.

Q What is this Lumbermen's Association, what kind of an organization is it?

Mr. O'Connor: Objected to as immaterial.

A It is an association of all the lumber dealers in Chicago. Well, they handle the rates, and look after competition of the north from railroads so that they don't have any better rates over the territories than we have from Chi-
1431 cago; we furnish the rates to the lumbermen from our office; more particularly railroad branch of the business.

Q In connection with your duties as Secretary have you used the reference book published by the Lumbermen's Credit Association?

Mr. O'Connor: Objected to as immaterial.

A Yes.

Q What uses have you made of it?

Mr. O'Connor: Same objection.

A We use them for rating, putting in the rates of the lumbermen. Mr. Clancy put a column in there on my suggestion so it would be handy for us.

Q What rates do you refer to?

Mr. O'Connor: Same objection.

A The freight rates on lumber.

Q And what else; what other uses if any?

Mr. O'Connor: Same objection.

A That is what our office uses it mostly for. Very often.

Q Are you familiar with the book published by R. G. Dun & Company?

Mr. O'Connor: Objected to as immaterial.

A No, sir.

Q Do you use it in connection with your duties as Secretary?

Mr. O'Connor: Same objection.

A No, sir.

Q How extensively is the reference book published
1432 by the Lumbermen's Credit Association used in the lumber trade in this city, if you know?

Mr. O'Connor: Objected to as immaterial and because it calls for the witness' conclusion, the witness not being shown to be speaking of his own knowledge.

Q I mean among the wholesale lumbermen? A Among our dealers here, I guess we all use it.

Q What position does this book published by the Lumber-

men's Credit Association occupy in the lumber trade in Chicago as an authority on credits, if you know?

Mr. O'Connor: Objected to as immaterial and because it calls for the witness' conclusion.

A Well, it is the only thing we use on lumber classifications, we use it entirely.

Q You mean as what?

Mr. O'Connor: Same objections.

A For credits and for rates and for everything of the kind.

Q Know whether it is used as a guide or mailing list extensively?

Mr. O'Connor: Same objections.

A Yes, sir, it is used for a mailing list, that is the reason the rates are put in.

Q Mr. Hooper, have you ever heard the reference book published by the Lumbermen's Credit Association discussed by lumbermen?

Mr. O'Connor: Objected to as immaterial and because it calls for mere hearsay testimony.

1433 Q In connection with the classification, I mean.

Mr. O'Connor: Same objections.

A I have heard the book discussed in our Secretaries' Association. The Secretaries' Association is composed of all the Secretaries in the—

Mr. O'Connor: I object to the witness' statement as to what the Secretaries' Association is composed of as not responsive to the question.

Q Go ahead. A Composed of all the secretaries of the different organizations, lumber organizations throughout the country west of the Alleghany mountains, west of Pittsburg, and Mr. Clancy's book had been classifying some lumber dealers that were not lumber dealers, but they handled lumber in connection with their little carpenter shop, and we discussed that and told Mr. Clancy—got Mr. Clancy before us and asked Mr. Clancy to change the classification and say when a man had a carpenter shop that he was a carpenter and not a lumber dealer, because it confused the lumber men in selling lumber direct to a man who thought they was in the lumber business, that they were simply a carpenter. Mr. Clancy said that of course he had to rate those people as lumber men because they bought lumber even if they were carpenters, but if the Secretaries who considered the proposition—the book is very valuable to them—would notify

him where he had made a misclassification in this par-
1434 ticular interest that he would rectify it, and not only that, he said to them that in addition that if there was any lumber men, new lumber men, go in business, any station that I haven't got, you have got to agree to immediately furnish me with the name of that man so that I can have his rating adjusted and fixed up. That is the only time that we ever discussed it, was in reference to the classification.

Q What is this association that you refer to, Secretaries' Association?

Mr. O'Connor: Objected to as immaterial.

A It is the Secretaries of all the associations both wholesale and retail west of the Alleghany mountains.

Q Do you know whether the secretaries do furnish information of the character you describe?

Mr. O'Connor: Same objection.

A I don't know whether they do personally, but I suggest Mr. Clancy can probably tell better than I can.

Q You don't know personally about it? A I should furnish him information, anything that I knew, but whether any of them carry out the agreement or not, I don't know.

Mr. O'Connor: I object to the answer as not responsive.

Q You do?

Mr. O'Connor: Objected to as leading and immaterial.

A I do, yes.

1435 *Cross-Examination by Mr. O'Connor.*

Q You are Secretary of what? A Lumbermen's Association of Chicago.

Q It doesn't deal in lumber, does it? A No, sir.

Q It doesn't buy or sell lumber? A No, sir.

Q Is the Lumbermen's Credit Association's reference book the only reference book you use? A We use the Foster and Munger, too.

Q You mean the Foster Mercantile Agency's Book? A Yes, sir, that is the only ones that I know, that we use in our office.

Q How long have you used those books? A Ever since I have been Secretary, the Clancy. The Foster just sprung up three or four years ago.

Q For what purpose do you use those books? A Well,

n of E.

we use those books for the purpose of putting in the rates to the lumbermen.

Q Rates on what? A On lumber.

Q You mean freight rates? A Freight rates on lumber.

Q You don't use them for the purpose of ascertaining the credit of people? A No, our Association don't, no.

Q When you said a while ago in reply to a question to what extent the Lumbermen's Credit Association's book was used among lumbermen, you made an answer as I understood, that it was the only book we use, using the word "we"
1436 as I remember in your reply. Did you mean to say it was the only reference book that the lumbermen of Chicago use? A No, I don't. I don't know what they use. It is the only book we have in our office.

Q You don't know to what extent, of your own knowledge the lumbermen use his book, do you? A Well, I know from knowledge to the extent of putting the rates in, I know that our lumbermen—

Q I mean, do you know of your own knowledge what lumbermen use the Lumbermen's Credit Association's book? A I can tell you what lumbermen furnish us the book to rate, most of them.

Q What do you mean, the book to rate? A For instance, George Green Lumber Company takes Clancy's book, when he gets the book for 1903 immediately sends to my office and says to me, you go over this book, put in the rates and changes, &c., for the purpose of using it as a mailing proposition. Now they sell this lumber delivered f. o. b. cars Danville and the rate to Danville, Illinois, for instance is eight cents, we put those rates in a little column that Clancy fixed on the left hand side of the book, fixed a little column with four columns in like that (indicating) that we put the rate in, then if the rate for C. & E. I. is eight we put that in, if the Wabash is seven, we put in seven and we go over the book and rate it so he uses it for delivering lists throughout the country.

1437 Q Do you know of your own knowledge what proportion of the lumbermen of this city use the Lumbermen's Credit Association's book? A Well, we have about thirty members and I think we rate annually from twenty to twenty-five firms.

Q But how many—are there not many lumber men in this city who are not members of your association? A Not many yards.

Q But are there not many lumber men in the city, men who, deal in lumber who are not members of your association? A You mean have yards here in the city?

Q No, buy and sell lumber. A Why, yes, good many of them that aint.

Q Who are not members of your association? A Sure.

Q You don't know whether they subscribe to the Lumbermen's Credit Association's book or not? A I do not, I can only tell as to our members.

Q And as I understand there are only about twenty-five members of your association, who you say are members? A I say twenty or twenty-five.

Q Who use this book? A Twenty—or twenty-five sent to me to rate. I don't know how many take it. We have about thirty members, but twenty to twenty-five send to me to rate.

Q That is all you know about their taking the book? A That is all we know.

1438 Q Do you know whether they take any other books or not? A No, sir, I do not.

Re-direct Examination by Mr. Pease.

Q Of whom is the membership of your association composed?

Mr. O'Connor: Objected to as immaterial.

A Composed of the regular yard dealers in pine.

Q Where?

Mr. O'Connor: Same objection.

A In Chicago.

Q What volume of business in feet do the members of your association transact annually, if you know?

Mr. O'Connor: Objected to as immaterial.

A Well, probably there is about two billions of lumber handled in the city of Chicago annually. And about forty per cent. of that is yellow pine, comes from the south, and hard wood, yellow pine and hard wood, and about sixty per cent is white pine and I should judge from the statistical information I have that possibly fifty per cent—

Mr. O'Connor: I object to the testimony because it doesn't appear that he is speaking of his own knowledge.

A —is handled by the yard dealers of Chicago.

Q You mean feet, when you say two billions? A Two billion feet, yes, sir.

Q Does your association tabulate information in the way of statistics for your members, as to the amount of
1439 lumber handled?

Mr. O'Connor: Objected to as immaterial.

A We do.

Q You have personal knowledge of that?

Mr. O'Connor: Objected to as immaterial.

A I do it myself.

Mr. O'Connor: Personal knowledge of what, of the tabulation?

A Yes.

Mr. O'Connor: Not of the matter tabulated?

A I handle all the statistical information we get from railroad companies, postal cards, receipts of shipments of lumber—

By Mr. O'Connor:

Q When you say that you have personal knowledge, you mean personal knowledge simply that the facts sent to you are tabulated? A Yes, I tabulate them.

Q You haven't personal knowledge of the facts which are sent to you, have you? A I tabulate the facts sent to me.

Q You don't mean to say you have personal knowledge of the facts which are sent to you? A I don't know anything about them whether they are true statements or not.

1440 JAMES E. DEFEBAUGH called as a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Pease.

Q Please state your name? A James E. Defebaugh.

Q What is your business, Mr. Defebaugh? A I am a publisher.

Q What publication do you issue? A American Lumberman.

Q How often is it published? A Weekly.

Q What is the size of it?

Mr. O'Connor: Objected to as immaterial.

A It is an average of about one hundred pages a week.

Q What is your circulation?

Mr. O'Connor: Objected to as immaterial.

Q Is it large or small circulation?

Mr. O'Connor: Objected to as immaterial and because it calls for the witness' conclusion.

Q Well, we consider it quite large. Don't want any specific figures, I suppose.

Q No. To what trade in particular, if any, is your publication devoted?

Mr. O'Connor: Objected to as immaterial.

A Exclusively to the lumber trade.

Q How long have you been connected with the pub-
1441 lications in the interest of the lumber trade in this city?

Mr. O'Connor: Objected to as immaterial.

A Since 1880.

Q Are you familiar with the reference book published by the Lumbermen's Credit Association?

Mr. O'Connor: Objected to as immaterial.

A Yes, sir.

Q And how long have you been familiar with that publication?

Mr. O'Connor: Objected to as immaterial.

A Since 1886.

Q I mean the book published by the Lumbermen's Credit Association and its predecessor in business, the Lumber Mercantile Agency, conducted by Mr. Clancy? A Yes, sir.

Q Have you used it in connection with your business?

Mr. O'Connor: Objected to as immaterial.

A Yes, sir.

Q What uses have you made of it, for what purpose have—

Mr. O'Connor: Objected to as immaterial.

A Reference book.

Q Well, with reference to what particular?

Mr. O'Connor: Same objection.

A Well, in a variety of ways.

Q Please explain. A Like most commercial institu-
1442 tions we want to know the people we are doing business with. We don't enter into business relations with any one connected with the lumber trade in an advertising way without we know absolutely who they are, and we use various commercial agencies, particularly this one.

Q What do you seek to know about them in particular Mr. Defebaugh?

Mr. O'Connor: Objected to as immaterial.

Q Before entering into advertising relations with them?

A Particularly their financial standing.

Q And what use do you make of this reference book of the Lumbermen's Credit Association in that particular?

Mr. O'Connor: Objected to as immaterial.

A We refer to it and get reports from them.

Q Do you make any investigation with reference to the man's methods or habits of doing business?

Mr. O'Connor: Objected to as immaterial.

A We are usually well acquainted with the personnel of the trade, and that is our special or particular business, we gather all additional information we can where circumstances suggest it, from this and other sources.

Q In consulting the reference book published by the Lumbermen's Credit Association, do you take into account the pay ratings that are given?

Mr. O'Connor: Objected to as immaterial and leading.

A Yes, sir.

1443 Q State whether or not that has as much or more to do—your investigation has as much or more bearing upon the party investigated than the capital rating?

Mr. O'Connor: Objected to as immaterial and leading and calling for the witness' conclusion.

A I don't know as I quite get your question.

Q Well, in determining whether you will enter into contract relations with a party in advertising matter do you consider their method of pay, their habit of pay and doing business generally in connection with their supposed financial worth?

Mr. O'Connor: Same objections.

A That is the most important, as a matter of fact.

Q Now then, is there any information regarding that particular matter which you refer to or consult in the reference book published by the Lumbermen's Credit Association?

Mr. O'Connor: Same objections.

A Yes.

Q Given in what way?

Mr. O'Connor: Same objections and because the book is the best evidence of its contents.

A They give special information.

Q And what do you mean by that?

Mr. O'Connor: Same objection.

A Special information regarding methods and standing of people other than purely financial.

1444 Q And in what way is that expressed in the book?

Mr. O'Connor: Same objections.

A Well, it is indicated.
Q As part of the key? A As part of the key.
Q You refer to the pay ratings?
Mr. O'Connor: Same objections.
A Yes.
Q You referred to other reference books; what other reference books did you use?
Mr. O'Connor: Objected to as immaterial.
A We use the Dun's agency and we use the other lumber agency.
Q Do you know how the reference book published by the Lumbermen's Credit Association and its special reports are regarded in the lumber trade as a basis of credit?
Mr. O'Connor: Objected to as immaterial, as leading and because it calls for the witness' conclusion.
A Well, it stands as a special agency for them, exclusively for them, and consequently is looked upon as their particular source of information.
Q Well, how is it looked upon by them.
Mr. O'Connor: Same objections.
A It is looked upon as perhaps the most aggressive and reliable.
Q To what extent if any do you, or have you come in contact personally with the lumber dealers throughout
1445 the country, manufacturers of lumber?
Mr. O'Connor: Objected to as immaterial.
A I think I have the largest personal acquaintance of any man in the United States with the lumber trade.
Q How has that been acquired?
Mr. O'Connor: Same objections.
A By personal contact.
Q Have you talked with different individuals regarding this publication of the Lumbermen's Credit Association or have they talked with you in connection with your business as to its reliability and adaptability to the lumber business?
Mr. O'Connor: Objected to because the question calls for immaterial evidence and for hearsay evidence.
A We are frequently called upon for advice regarding various commercial agencies.
Q In that connection have you had occasion to refer to the reference book published by the Lumbermen's Credit Association?
Mr. O'Connor: Objected to as leading and immaterial.

A I have. I wish to qualify that by saying that I usually give reasons for any opinion or advice on those questions in the individual case, circumstances suggesting my answer in each case.

Q Do you know whether the arrangement and classification given in the book is of particular value to the lumber trade?

Mr. O'Connor: Objected to as immaterial and calling for a mere conclusion.

1446 A It is convenient and satisfactory, as far as I know.

Cross-Examination by Mr. O'Connor.

Q What other books, Mr. Defebaugh, do you use in your business besides the Lumbermen's Credit Association's book? A R. G. Dun & Company's book.

Q What other books? A There is another local lumber credit agency book.

Q What is the name of it? A I just for the minute don't remember it.

Q Foster Mercantile Agency's book? A Yes, Foster Mercantile Agency.

Q How long have you used R. G. Dun & Company's reference book in your business? A It has been in use in our office a great many years.

Q Can you give us an approximate idea of the number of years that you have used it in your office? A Well, it has been in our office ever since we have been an institution as at present the American Lumberman.

Q How long is that? A That is four years.

Q It was used in your business prior to that time? A Prior to that by one of our papers which then became amalgamated four years ago.

Q With your people? A Yes.

Q For what purpose do you use R. G. Dun & Company's reference book in your business? A Well, like most
1447 business houses, we confirm one report with another if possible, and simply duplicate evidence.

Q You use it for the purpose of ascertaining the financial standing and credit of parties? A Yes, sir.

Re-direct Examination by Mr. Pease.

Q Which book do you use most in your business?
Mr. O'Connor: Objected to as immaterial.
A The red book.
Q And by that you mean the Lumbermen's Credit Association book? A Yes, sir?
Q Why?
Mr. O'Connor: Objected to as immaterial and calling for a mere conclusion.
A Its convenience, its compactness, the fact that it is a strictly lumber record and that we don't have to wade through the entire publication, the larger publications referred to, to gather the minimum of information.

Re-cross-Examination by Mr. O'Connor.

Q But, Mr. Defebaugh, if you wanted to ascertain the financial standing of a party about whom you knew nothing, would you rely only upon the red book, as you call it? A I would rely strictly on either in my position, because it is my business to know this as well as it is theirs.
Q You would refer to all the information within your 1448 power? A Yes, sir.
Q You would refer to both books? A Yes, sir.
By Mr. Pease:
Q Mr. Defebaugh, have instances come to your notice during your acquaintance with these two publications where parties have been rated high financially, and good credit in the Dun book, and have been rated as blank or doubtful in the Lumbermen's Credit Association book, and the party fail?
Mr. O'Connor: Objected to as leading and as immaterial and because the books themselves are the best evidence of their contents.
A Well, I think that is the case that I have so found. I haven't specific instances in my mind at the present time, but I would regard the information of the red book as the most vital.
Mr. O'Connor: Object to the last part of the witness' statement beginning "I would regard" &c., as stating a mere conclusion.
Q During your experience and use of the two books which have you found the more conservative and reliable as a basis of extending credit?

Mr. O'Connor: Objected to as immaterial and leading and because the books themselves are the best evidence of their character and contents and as calling for a conclusion of the witness.

A To answer that question I would simply say this:
1449 For reasons already indicated in my answers, the book is more compact, strictly devoted to the lumber business, it is therefore referred to more often, and because it does—the institution does devote its time and attention in that book alone, to the lumber business strictly, its information is in my opinion more exact and more to be depended upon.

By Mr. O'Connor:

Q Mr. Defebaugh, have you ever set out to make a comparison of all the names that appeared in both the red book, that is the Lumbermen's Credit Association book and R. G. Dun & Company's book? A No, sir.

Q Then you haven't personally made a comparison of the names in both books so that you can testify as to the merits of the two books, upon your own examination and knowledge? A Not every name in the book.

Q Have you ever found names that are rated higher in the red book than the same names were rated in R. G. Dun & Company's book? A Don't recall any specific instance though that might have been the case.

Q Do you remember whether you have found a higher rating given to certain names than was given to the same names in R. G. Dun & Company's book? A I don't recall an instance at this time.

Q I am not asking whether you remember specific in-
stances, but do you remember whether you have ever
1450 found names to which a higher rating was given in the red book than was given in R. G. Dun & Company's book? A I say I don't recall any specific instance; I think it is very likely to be true.

Q In the cases where you say parties were given a lower rating in the red book than in R. G. Dun & Company's book and the parties failed, do you know of your own knowledge what the financial standing of the party was at the time they were rated by R. G. Dun & Company and by the Lumbermen's Credit Association? A In following up such reports I have found greater accuracy in these reports (indicating).

Mr. O'Connor: I ask the answer be stricken out as not responsive to the question.

Q You say that in following up the reports, in such cases you say that you followed up the reports in such cases, what do you mean, you made inquiries? A Yes, I always do that regardless of the agencies. Deposition James S. Defe

Q You don't make actual investigation of the parties? A There isn't a day in the year that we don't make investigation of that kind through our own agency.

Q By inquiries? A Yes, sir.

Q But I mean to say, you didn't go into the stores of these parties if they owned stores, or in their factories, if they owned factories, and examine their book of account or
1451 there stock on hand, did you? A No, that isn't the ordinary way of getting information in the newspaper line.

Mr. Pease: Reference book line either.

Q How do you make investigation, what do you mean when you refer to your own agency? A My own staff of reporters and detectives.

Q Your own employes? A Yes, sir.

Q You don't run a financial agency do you Mr. Defebaugh? A No, sir.

Q These men that you call agents don't give their whole time, do they, to the collection of information regarding parties? A That is an incident of their daily work.

Q What is their main work? A Repertorial work, or whatever we send them out for.

Q Collecting information from the people— A Yes, sir.

Q —to be published in the paper? A Yes, sir.

A. S. BADGER, called as a witness on behalf of defendants, being first duly sworn, testified as follows: Depos A. S.

Direct Examination by Mr. Pease.

Q Please state your name? A A. S. Badger.

1452 Q What business are you engaged in? A Wholesale lumber business.

Q Where is your office? A 835 Marquette Building, Chicago.

Q With whom are you associated, if any one; under what name are you doing business?

Mr. O'Connor: Objected to as immaterial.

A I am President of the Badger & Jackson Company.

of
lger.

Q How long have you been engaged in the lumber business?

Mr. O'Connor: Same objection.

A Since 1876.

Q What is the extent of your business, in feet, annually?

Mr. O'Connor: Objected to as immaterial.

A In the year 1902 we shipped sixty million feet of lumber.

Q Are you familiar with the reference book published by the Lumbermen's Credit Association?

Mr. O'Connor: Objected to as immaterial.

A I am.

Q Are you using it?

Mr. O'Connor: Objected to as immaterial.

A Yes, sir.

Q How long have you used that book?

Mr. O'Connor: Objected to as immaterial.

A Since 1876.

Q What uses do you make of it?

Mr. O'Connor: Objected to as immaterial.

1453 A We use it daily in looking up the rating of parties, what line of business they are in, what railroads reach the points where they are at, and various other information that is given in the book.

Q What if any use do you make of the freight columns?

Mr. O'Connor: Objected to as immaterial.

A We don't fill them in or follow them fully.

Q What if any use do you make of the blank space at the right?

Mr. O'Connor: Objected to as immaterial.

A We make various notations and corrections, information.

Q What if any use do you make of the book as a guide for mailing lists?

Mr. O'Connor: Objected to as immaterial.

A It is very complete in that respect.

Q Do you use it for that purpose?

Mr. O'Connor: Objected to as immaterial.

A Yes, sir.

Mr. O'Connor: I move the preceding answer be stricken out as not responsive.

Q Do you use any other book, any other reference book?

Mr. O'Connor: Objected to as immaterial.

A Not at present.

Q Why not?

Mr. O'Connor: Same objection.

A Well, in the years past we have used most all of
1454 the books, and we like the Lumbermen's Credit book better.

Q How do you regard the reference book of the Lumbermen's Credit Association as a basis for extending credit?

Mr. O'Connor: Objected to as immaterial and calling for the conclusion of the witness.

A I think it is the most complete, the most comprehensive and the most satisfactory book that rates the lumber trade.

Q Do you know how extensively that book is used by the lumber trade?

Mr. O'Connor: Objected to as immaterial.

A Yes, sir, I do.

Q How extensively is it used?

Mr. O'Connor: Objected to as immaterial.

A Extensively and almost universally used and considered the standard of the credit ratings in the lumber trade by most lumber dealers.

Mr. O'Connor: I move the latter part of the witness' answer, giving the opinion among lumber men be stricken out as not responsive to the question.

Q How is it regarded among the lumber trade as a basis of credit?

Mr. O'Connor: Objected to as immaterial and calling for the witness' conclusion.

Q Or as a credit guide? A It is regarded as the best credit guide there is in the lumber trade.

1455 Q What if anything in reference to the pay ratings do you regard as important?

Mr. O'Connor: Objected to as immaterial.

A Showing whether dealers are prompt, medium or slow pay.

Q How does that differ from the general credit rating?

Mr. O'Connor: Objected to as immaterial.

A General credit rating doesn't give much definite information and says fair or good or high.

Q Is there anything in the classification which is of particular advantage to the lumber trade?

Mr. O'Connor: Objectd to as immaterial and as calling for a conclusion of the witness.

A You mean the classification as to the branches of the lumber trade?

Q Yes. A Yes, we consider it a great advantage to know whether parties are wholesale dealers or just pine lumber, or hard wood, or only planing mills, or what particular branch of the lumber business they are engaged in.

Q How about the rating of "33" given in the Lumbermen's Credit book?

Mr. O'Connor: Objected to as immaterial.

A We consider it most important and most essential, and it shows from past experience, whether parties are inclined to find fault unjustly, or whether they are fair and reasonable in their settlements, and a party who is rated "33" we wouldn't sell lumber to.

1456 Q How about the information with reference to the purchasing departments, line yards, do you think this of any particular value?

Mr. O'Connor: Objected to as immaterial.

A We have found it a very great advantage as it saves us sending salesmen to towns where the purchasing is not done, and enables us to tell just where to send our men to the purchasing offices of all the concerns in the lumber business.

Q Is there anything in the classification which indicates the wholesale dealers who do not have a yard and carry a stock?

Mr. O'Connor: Objected to as immaterial and leading and because the book is the best evidence of its contents and character.

A Yes, sir.

Q Is this any value or advantage to the credit man in a lumber concern? A Yes, sir, it is a very great advantage because if people are in the wholesale lumber business and have no yard it shows that they want to buy the lumber to sell it again to a third party, which makes more people to please on the quality of the lumber than if it goes direct to the first purchaser.

Q Does it make any difference as to a person's standing, credit standing?

Mr. O'Connor: Same objections.

A Yes, sir, makes a very material difference.

1457 Q Why?

Mr. O'Connor: Same objections.

A Why, if they are going to use the lumber themselves there is only one party to please on it, and it is on your own representations; if they sell again to a third party it is on

their representation and there is more opportunity for misunderstanding.

Q Any influence upon you as to a person's desirability?

Mr. O'Connor Same objections.

A Most decidedly.

Q For what reason?

Mr. O'Connor: Same objections.

A We would rather sell to a man that has the lumber in his own hands.

Q Would you regard a man wanting to buy lumber who did not have a yard, or a stock on hand, as good a risk as one who did?

Mr. O'Connor: Objected to as leading and immaterial, and calling for the witness' conclusion.

A No, sir, I would not:

Q Why not?

Mr. O'Connor: Same objections.

A Because a man that has a lumber yard has the full control in his own hands of the disposition of the lumber, he can file a lien, and it is entirely in his hands how he disposes of the lumber.

1458 Q Is there anything with reference to having tangible assets in his possession?

Mr. O'Connor: Same objections.

A Yes.

Q What if any use do you make of the rating "63", Mr. Badger?

Mr. O'Connor: Objected to as immaterial.

A We use all the ratings.

Q "Regarded as consumers by retail lumber associations", do you make any use of that information?

Mr. O'Connor: Objected to as immaterial.

A Yes, we do, we wouldn't sell to anybody rated "63".

Q Why not?

Mr. O'Connor: Same objection, and as calling for a conclusion.

A Because we sell to lumber dealers exclusively.

Q What if any influence on the question of credit has the rating of "7"?

Mr. 'O'Connor: Same objections.

Q "If interested inquire at office"? A We consider that very valuable, as it shows that the party should not be sold without more definite information.

n of
adger.

Cross-Examination by Mr. O'Connor.

Q How long has your concern been using this Lumber-
1459 men's Credit Association book? A Well, the concern I am with now has been using it since 1896, at which time we commenced business. The various concerns I have been with have used it since 1876.

Q Has your concern a credit man? A I pass on the credits myself.

Q Does any one else connected with your concern pass upon them? A Only in my absence.

Q Do you use any other book in your business? A Not at present.

Q Have you heretofore used other books in your business, other reference books? A Yes, sir.

Q What other reference books? A We had the Foster Lumber Association book.

Q You mean the Foster Mercantile Agency's book? A Yes, sir.

Q When did you last use that book? A We had the book for about two years, but we used it very little, didn't have much opinion of—

Q Have you ever used any other reference book in your business? A Yes, sir.

Q What other reference books? A R. G. Dun & Company and Bradstreet.

Q When did you last use R. G. Dun & Company's reference book? A I should think, be about eight years ago.

Q How long did you use it? A O, for six or eight years.

Q Have you had occasion to inquire of lumber men
1460 throughout the city of Chicago whether they were using the Lumbermen's Credit Association's reference book or not? A Yes, sir.

Q You have made inquiries of them whether they were using it or not? A No, I have not made inquiries, but naturally in talking with my neighbors and friends in the lumber business I have known that the Lumbermen's Credit book has been considered standard.

Q My question is, whether you have had occasion to make inquiry of the lumber men throughout Chicago, whether they are using the Lumbermen's Credit Association's reference book or not? A No, sir.

Q Do you know to what extent R. G. Dun & Company's

reference book is used among lumber men in Chicago? A Only in a general way. Deposition A. S. B

Q To what extent is it used among lumber men in Chicago? A Not very generally, I should say, some of the larger concerns use it, but more people depend upon the Lumbermen's Credit.

Q You had no occasion to make inquiry, to investigate what proportion of the lumber men in Chicago used one book and what proportion of them used the other, had you? A No, sir.

Q Are you acquainted with Mr. Clancy? A Yes, sir.

Q Personally? A Yes, sir.

Q How long have you known him? A Since 1876.

1461 Q Personally? A Yes, sir.

Q Before you came here did Mr. Clancy or his attorneys talk with you about this case? A Before I came to this room here?

Q Yes, to testify? A Yes, I spoke with Mr. Clancy about it.

Q Did his attorney talk with you about the case? A No, sir.

Q Neither Mr. Atwood nor Mr. Pease talk with you? A No, sir.

Q Before you began to testify? A No, sir.

W. G. KIMBALL called as a witness on behalf of defendants, being first duly sworn, testified as follows: Deposition W. G.

Direct Examination by Mr. Pease.

Q Please state your name? A W. G. Kimball.

Q What is your business? A Local manager of the Pittsburg Plate Glass Company.

Q How long have you been engaged in that line of business? A Fifteen years.

Q Are you familiar with the reference book published by the Lumbermen's Credit Association?

1462 Mr. O'Connor: Objected to as immaterial, calling for the witness' conclusion.

A Yes, sir.

Q How long have you been familiar with it?

Mr. O'Connor: Same objection.

A Several years.

n of Kimball.

Q In what way did you become familiar with it?
Mr. O'Connor: Objected to as immaterial.
A By using it.
Q And for what purpose or purposes?
Mr. O'Connor: Same objection.
A To gain information on the credit of people in the lumber business.
Q Wherein is this reference book of advantage, I mean the Lumbermen's Credit Association's reference book, of advantage over the general agency books in your business, as regards the lumber dealers and the line of dealers that you sell?
Mr. O'Connor: Objected to as immaterial and because it calls for the witness' conclusion, and because it is leading.
A We get a more definite report on the person or firm asked about, especially in their habits of pay and present condition.
Q Do you use the Lumbermen's Credit Association's reference book for any other purposes than as a basis of extending credit?
Mr. O'Connor: Objected to as immaterial.
1463 A No.
Q Do you use it as a mailing list?
Mr. O'Connor: Objected to as immaterial.
A No.
Q Do you use other reference books? A Yes.
Q That is, Dun's and Bradstreet's?
Mr. O'Connor: Objected to as immaterial.
A Yes.
Q What is your experience, Mr. Kimball, in the use of this book, I mean the book of the Lumbermen's Credit Association as to the reliability and correctness of the information which it contains as a basis of extending credit?
Mr. O'Connor: Objected to as immaterial and calling for the conclusion of the witness.
A We have been better satisfied with the information that we had through it, people in the lumber business, and that is a line we sell considerably, than any of the other books we have used.

Cross-Examination by Mr. O'Connor.

Q You say that you do use R. G. Dun & Company's book? A Yes, sir.

Q How long have you used it in your business? A Probably—O, many years.

Q You have used it during the fifteen years that you
1464 have been in business, have you? A Well, not each year but probably two thirds of the time.

Q Are you now using it? A Yes.

Q How long have you been using it continuously? A Three years.

Q For what purpose do you use it? A As a basis for credit with certain lines of trade that we sell.

Q What particular lines? You mean as a basis of credit for the lines? A For certain lines that we sell.

Q You mean all the lines that you sell? A No.

Q Only part of the lines that you sell? A Only part of the lines.

Q What particular lines? A Well what we call the store trade, which includes drug stores, hardware stores and paint stores.

Q Are those the only lines in which you refer to R. G. Dun & Company's book? A Not entirely.

Q In what other lines do you use R. G. Dun & Company's reference book? A Wherever they have a rating we make inquiry.

Q Whenever you want to ascertain the rating of a party in any line you refer to R. G. Dun & Company's book, do you? A Yes.

Q What other books have you used? A We use Bradstreet.

Q Do you use any other books now besides R. G. Dun &
Company's reference book and the Lumbermen's Credit
1465 Association's book? A Yes.

Q What other book? A We use Bradstreet's and we use a Credit Guide, and we use, I think it is called the B. C. A.

Q Do you use the Foster Mercantile Agency's book? A No.

of ttle.

A. H. TUTTLE called as a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Pease.

Q Please state your name? A A. H. Tuttle.

Q By whom are you employed? A Lumbermen's Credit Association.

Q How long have you been in their employ? A Since the last week in October, last year.

Q What if anything did you do with reference to the names checked in the left hand column of the Lumbermen's Credit Association's January, 1902, book, marked Complainant's Exhibit 9? A I counted the names checked on the left.

Q How many names are there checked on the left hand column in this book? A 14,205.

Q Can you give us the number in each state? A Shown by the schedule.

1466 Q What else, if anything, did you do with reference to these same names? A I made a schedule of the ratings given the names checked in Defendants' Exhibit number 9.

Q Mr. Tuttle, how many of the names checked in the left hand margin in Exhibit 9, in the whole book, had the letter or rating "H"?

Mr. O'Connor: Object to the question as assuming a fact not shown by the evidence, and as leading.

A Thirty-six.

Q How many had the rating or letter "G" after then?

Mr. O'Connor: Same objections.

A 108.

Q How many letters or rating of "BC"?

Mr. O'Connor: Same objections.

A 1369.

Q And how many were given the rating "C"?

Mr. O'Connor: Same objections.

A 1068.

Q And how many were given the rating "B"?

Mr. O'Connor: Same objections.

A 738.

Q And how many were given the rating "AA"?

Mr. O'Connor: Same objections.

A 385.

Q And how many were given the rating "AAA"?

1467 Mr. O'Connor: Same objections.

A 605.

Q How many were given the rating "AAAA"?

Mr. O'Connor: Same objections.

A 467.

Q How many of these names checked, if any, was the purchasing department given?

Mr. O'Connor: Same objections.

A 1215.

Q In what manner is that expressed, or in what manner did it appear in the book? A It appears at the bottom of the name, under the name, "see purchasing department" such and such a place.

Q Does it use the word "see"? A Sometimes it does, sometimes not.

Q How many of the names were given the rating "7"? A 69.

Q And in what manner had they been checked or counted by the complainants? A They had been counted as blank.

Q How many were given and had the rating "89"? A 106.

Q How many were given the rating of Blank 1? A 163.

Q How many were given the rating of blank 2? A 177.

Q How many were given the rating of blank 3?

1468 A 190.

Q How many were given the rating of blank 3-1/2? A 47.

Q How many were given a blank, perfectly blank rating? A 897.

Q In what manner had the names rated "89", blank 1, blank 2, blank 3 and blank 3-1/2 and appearing in this Exhibit 9, been classified in the checking done by the complainant?

Mr. O'Connor: Objected to as calling for the witness' conclusion, the witness not shown to be speaking of his own knowledge.

A As blank.

Mr. Pease: He did this work himself.

Q What if anything did you do with reference to the names appearing in this Exhibit 9, that were checked on the right hand margin? A I counted the names.

of title.

Q How many did you find in Exhibit 9 checked on the right hand side? A In Exhibit 9 I found 16,089.

Q Do you know in what manner they are classified by the complainant, or counted?

Mr. O'Connor: Objected to as calling for the witness' conclusion, and because it is not shown that the witness is speaking of his own knowledge.

A They are counted as appearing in the Lumbermen's book.

Q What Lumbermen's book? A Lumbermen's 1469 Credit Association book known as Exhibit 9, and it is the January issue, 1902, those names are classified or checked as names that appear in the Lumbermen's Credit Association book that does not appear in Dun's book.

Q State whether or not you found the names of any towns in the Lumbermen's Credit Association book for January, 1902, marked Complainant's Exhibit 9, among the names checked that do not appear in the reference book of R. G. Dun & Company? A Yes, sir.

Q How many?

Mr. O'Connor: Objected to because it doesn't appear the witness is speaking of his own knowledge and because it is immaterial.

Q Sate whether or not you made any examination or comparison of the two books in question for the purpose of ascertaining whether or not there are any towns in the Exhibit 9 that are not in the Dun book? A I did.

Q What did you find, if anything, in reference to them? A I found 147 towns.

Q Where? A In the book referred to, distributed through different states in the United States and Manitoba.

Q Well, tell us what book that was, Exhibit 9? A That is Exhibit 9, January book, 1902.

Q What else with reference to these 147 towns, did they appear in the Dun book? A No, sir, according to their statement.

Q What if anything did you do with reference to the 1470 names checked in Complainant's Exhibit 8, being the July, 1901, edition of the reference book? A I counted the names that was marked with a cross on the left of the name in Complainant's Exhibit 8, of the Lumbermen's Credit Association reference book of July, 1901.

Q Of the names marked with a cross on the left hand col-

umn of that book, how many were given the rating "H"? Depo A.
A 19.
Q How many were given the rating "G"? A 40.
Q How many were given the rating "BC"?
Mr. O'Connor: Objected to as immaterial.
A 516.
Q How many were given the rating "C"?
Mr. O'Connor: Same objection.
A 403.
Q How many were given the rating "B"?
Mr. O'Connor: Same objection.
A 280.
Q How many were given the rating "AA"?
Mr. O'Connor: Same objection.
A 137.
Q How many were given the rating "39"?
Mr. O'Connor: Same objection.
A 225.
Q How many were given the rating "49"?
Mr. O'Connor: Same objection.
1471 A 182.
Q In how many cases, how many of these names checked was the purchasing department given?
Mr. O'Connor: Same objection.
A 700.
Q How many were given the rating of "7"? A 47.
Q How many were given the rating of "89"? A 42.
Q How many were given a rating of blank 1? A 115.
Q How many were given the rating of blank 2? A 144.
Q How many were given the rating of blank 3? A 135.
Q How many were given the rating of blank 3-1/2? A 19.
Q How many were given a blank rating? A 567.
Q The ratings, letters and figures which you have referred to, appeared in what manner in this book, printed? A Yes, sir.
Q In what manner were the names checked bearing the ratings 7, 89, blank 1, blank 2, blank 3 and blank 3-1/2 classified or counted by complainant, if you know?
Mr. O'Connor: Objected to because the witness is not
1472 shown to speak of his own knowledge.
A As blank.
Q What if anything did you do with reference to the

names checked in Complainant's Exhibit 8, in the right hand column? A I checked,—I made an exhibit in a book of the same issue on the right, putting a cross in each place as it appeared in Complainant's Exhibit number 8.

Q With what did you make that cross or check? A In red ink, that is I made that exhibit as far as page 21 in New Hampshire.

Q Did you count the names checked in Complainant's Exhibit 8 in the right hand column? A No, I did not.

Q What if anything did you do with reference to the names checked with a cross in the right hand column in Complainant's Exhibit 9, in addition to counting them? A I made a schedule as shown, that is, showing the total number of names checked in Exhibit 9.

Q What if anything did you do with reference to checking those same names in red ink in another edition of the Lumbermen's Credit Association's reference book for January, 1902? A The checks in red on the right are the names as shown in their Exhibit number 9, as being names that does not appear—

Q I know, but did you check those same names in another edition? A No, sir, I counted them in the other edi-
1473 tion as already stated.

Q Didn't you check them in our exhibit in red ink? A I did in Exhibt 8, it is what is known as Exhibit 140.

Q What did you do in Exhibit 140? A I checked the names in red ink on the right.

Mr. O'Connor: What is Exhibit 140?

Mr. Pease: Copy of our January, 1902 book.

Q What names did you check in red ink on the right in Exhibit 140? A The names that are in the Lumbermen's Credit Association book and not in Dun's.

Q What did you check it from? A I checked from Exhibit number 9.

Q What did you check in Exhibit number 9? A I checked the names that they checked as being—how are they checked,—in lead pencil, in some cases.

Q Where? A On the right.

Q What if anything did you do in Defendant's Exhibit 141 with reference to the names appearing in Complainant's Exhibit 8, checked in the right hand column, checked them in red ink, didn't you?

Mr. O'Connor: Object to the question as leading.

A I don't understand that question. I think I answered that question. Depos A. H

Q You answered it with reference to the other exhibit.
1474 Didn't you do the same work in both books? A I didn't do the same work in both Exhibits, that is in reference to the names that appear in the Lumbermen's Credit Association book and does not appear in the Dun book.

Cross-Examination by Mr. O'Connor.

Q Mr. Tuttle, did you make a comparison of Complainant's Exhibit 9, that is the Defendants' January, 1902 book, with R. G. Dun & Company's book? A In what way do you mean?

Q Did you have R. G. Dun & Company's book— A I had their schedule.

Q And compared this book with it? A No, sir.

Q Then you don't know what names which appear in this Exhibit 9 do not appear in R. G. Dun & Company's book? A I checked the names—

Q No, answer my question, do you know from an examination of R. G. Dun & Company's book what names appear in this Exhibit 9 which do not appear in R. G. Dun & Company's book?

Mr. Pease: I object to the question as not cross examination; the witness didn't testify at all in reference to that.

Mr. O'Connor: Let him answer my question.

Mr. Pease: We don't claim that he did. He told you that he counted the names checked on the right hand margin.

Mr. O'Connor: One of your questions assumed that
1475 names which appear in this Exhibit 9 did not appear in Dun & Company's book, and the witness constantly spoke of names which appear in this Exhibit 9 which do not appear in R. G. Dun & Company's book. Now I want to know whether the witness was speaking of his own knowledge or not.

Mr. Pease: The testimony of your witnesses shows that the names which are checked on the right hand margin of that book were names which they say did not appear in that book.

Mr. O'Connor: Well, let the witness answer the question.

Q Do you know from an examination of R. G. Dun & Com-

A. H. pany's book where names appearing in this Exhibit 9 do not appear in R. G. Dun & Company's book? A No, I do not.

Q You have not made any examination of R. G. Dun & Company's books, have you? A I have, yes, sir.

Q The books themselves? A Yes, sir.

Q What editions? A The September edition.

Q What year? A September, 1902, I think it was, the book on which the two comparisons are based with the January issue of 1902.

Mr. O'Connor: I ask that the last part of the answer, "it is the book" &c., be stricken out as not responsive to the question.

Q Please answer my question, Mr. Tuttle. You say that you have made an examination of one of R. G. Dun & Company's books? A Yes, sir.

Q Which edition? A September edition.

1476 Q What year? A Either September 1902 or September 1901.

Q What comparison did you make of that book? A Why, I referred to it in connection with this work occasionally, to see that the names did not as stated appear.

Q Did you make a comparison as to all the names in the Lumbermen's Credit Association's book, reference book, to see which of them appeared in R. G. Dun & Company's book? A I did not.

Q Did you make a comparison to ascertain whether all of the names indicated by any marks in Exhibit 9 as not appearing in R. G. Dun & Company's book did not appear in R. G. Dun & Company's book? A It wasn't necessary.

Q Why not? A Why, because it had already been sworn to by Dun's employes, that it did not appear.

Q Now answer my question; did you make a comparison of the two books to ascertain from your own examination whether any names indicated or marked in the red book appeared in R. G. Dun & Company's book or not? A I did in some cases.

Q In how many cases? A I couldn't recall how many, quite a good many.

Q But not in all cases? A Not in all cases, it wasn't necessary.

1477 Q Did you count the number of cases in which you did make the comparison? A I did not, I had a special reason for making those comparisons.

Q Now Mr. Witness, you will please answer my questions

only, I don't want your reasons. Did you count the number of cases in which you made an examination of the two books to see which appeared in one and did not appear in the other? A I did not.

Q You say that 36 of the names checked in Exhibit 9 in the left hand margin are rated in that book as "H"? A Yes, sir.

Q Did you make a schedule showing how those 36 names were distributed in the different states? A Yes, sir.

Q How many of them are in each state? A Yes, sir.

Q Where is that schedule? A It is here.

Q Have you a memorandum of those names, of the number appearing in each state? A Yes, sir, I think I have.

Q How are the names which you say were checked in Exhibit 9 in the left hand margin and rated "H", "G", "BC", "C", "B", "AA" "AAA" and "AAAA" distributed among the states? A They are distributed as follows:

1478 Q How did you count these names? A By making tally sheets and counting them.

Q What do you mean by tally sheets? A I made a tally sheet.

Q What do you mean by a tally sheet? A Well, it is a tally, a count.

Q Did you count directly from Exhibit 9, or did you check these names which are checked in Exhibit 9, in a copy of Exhibit 9 before you counted them? A I counted them from Exhibit 9.

Q Did any one assist you in counting them? A No, sir.

Q Did you count any other names that had any other ratings than those that you have specified? A No, sir.

Q How are the 1215 names of purchasing departments distributed among the states? A They are distributed as follows:

(See schedule at end of deposition)

1479 Q When you say that a certain number of names which are rated "7" in Exhibit 9, were counted by complainant as blank, how did you know the complainant counted them? A From the schedule.

Q What do you mean by the schedule? A The schedule alongside in that Exhibit 9.

Q You mean from marks in this Exhibit 9? A Yes, sir.

A. H. Q Were you present when the complainant's witnesses testified in regard to this book? A No, sir.

Q Then you know only what has been told you? A No, sir, I figured it out for myself.

Q How? A I had Dun's book, I had access to that book, I could find that key.

Q Find what key? A The key they worked by, I afterwards found that it was available any way.

Q Did you compare every name which was rated "7" in complainant's Exhibit 9 with the same name in— A No, sir.

Q —in R. G. Dun & Company's book? You say that 69 names are rated "7" in the Complainant's Exhibit 9 which were counted by the complainant as blank? A Yes, sir.

Q Did you examine R. G. Dun & Company's book with reference to all of those 69 names to see how they were rated in R. G. Dun & Company's book? A I examined in—

1480 Q Answer my question. A I will try to, that is the only way I can answer it.

Q It can be answered yes or no. A No, it can't.

Mr. O'Connor: Read the question.

Question read as follows: "Did you examine R. G. Dun & Company's book with reference to all of those 69 names to see how they were rated in R. G. Dun & Company's book"?

Q Answer my question yes or no. A I did in several instances, to satisfy myself what key they used, what comparison they made.

Q Now, Mr. Tuttle, will you please answer my question. Did you examine R. G. Dun & Company's reference book with reference to all of the 69 names to see how they were rated in R. G. Dun & Company's book? A Not all of the 69 names.

Q Did you examine R. G. Dun & Company's reference book to see how the 106 names which you say are rated in the Complainant's Exhibit 9 at "89" were rated in R. G. Dun & Company's reference book? A Not all of them.

Q Do you know how many of them you did examine in R. G. Dun & Company's book? A In some cases.

Q I mean of these 106? A O, possibly 25 or 30 per cent.

Q With reference to those 25 or 30 how did you find the check marks made by the complainant in Exhibit 9?

1481 A From their schedule in Exhibit 9.

Q Did you find the marks to be correct? A I found that they had been rating our blank 1, 2 and 3—

Q Did you find the names to be rated in R. G. Dun & Company's reference book as indicated by the marks which you found in Exhibit 9 in the right hand margin? A Yes.

Q Did you examine R. G. Dun & Company's book with reference to the 163 names which you say are rated in Exhibit 9 at blank 1? A Not all of them.

Q Did you count the number of them which you did examine? A No.

Q Did you examine R. G. Dun & Company's book with reference to the 177 names which you say you found to be rated blank 2 in Exhibit 9? A Not all of them.

Q Did you count the number of them which you did examine? A I did not.

Q Did you examine R. G. Dun & Company's reference book with reference to the 190 names which you say you found rated blank 3, or the 47 names which you say you found rated in Exhibit 9 at blank 3-1/2, or the 897 names which you say you found rated in Exhibit 9 as blank? A Not all of them.

Q Did you count the number of them which you did examine? A I did not.

Q But so far as you did examine R. G. Dun & Company's book you found that R. G. Dun & Company's ratings 1482 written in ink in the right hand margin of Exhibit 9 to be correct? A Yes, sir.

Q What did you say about the 16,089 names checked on the right hand side of Exhibit 9? A Why, they are the names that are checked in Exhibit 9, in Dun's Exhibit 9.

Q You mean the Lumbermen's Credit Association's book? A Yes, as appearing in the Lumbermen's Credit Association book that do not appear in Dun's book.

Q How do you know that they do not appear in Dun's book, did you make an examination of Dun's book to see if they were in it or not? A In some instances.

Q Did you compare the whole 16,089 names? A No, sir.

Q How many of them did you compare? A In instances where—

Q How many altogether did you compare? A I can't tell you how many.

Q You compared only one occasionally? A Occasionally.

of A. H.

Q How were they marked? A With a cross.
Q Where? A At the right.
Q Of Exhibit 9? A Of Exhibit 9.
Q On some pages in Exhibit 9 there are two columns containing letters and figures in ink? A Yes, sir.
Q Which column did you compare? A The one nearest to the Lumbermen's ratings.
1483 Q To the left hand column? A Yes, the one nearest to the Lumbermen's printing.
Q The left hand column as you look at the book? A Yes, sir.
Q All you know about these names as not appearing in R. G. Dun & Company's book is simply that you were told that this mark to which you refer indicated that they were not in R. G. Dun & Company's book, except that you occasionally examined R. G. Dun & Company's book to see if a certain name was in it? A No, I had a better reason for knowing than that.
Q What was your reason? A Why, it was given in previous testimony that it indicates—
Q You read over the previous testimony, did you? A I read some of it.
Q You weren't present when the testimony was given? A I wasn't.
Q You have read a copy of it? A Occasionally.
Q Well, that is how you received your knowledge that these names were not in R. G. Dun & Company's book, is it? A Yes, sir.
Q You counted up all names appearing in Exhibit 9 with a mark alone on the right? A Cross.
Q A cross? A A cross.
Q At the right of the name? A Yes, sir.
Q Either in ink or in lead pencil? A In ink or in lead pencil.
1484 Q Did you count the names yourself? A I did, sir.
Q Did any one assist you? A No, sir.
Q How are these names distributed among the states? A They are distributed as follows:

Names and towns checked on Dun's Ex. No. 9, which appear in L. C. A. Ref. Book and not in Dun's Ref. Book.

1485 State	No. of Names.	No of Towns.	State	No. of Names.	No. of Towns.	Deposit Tuttl
Alabama	375	17	Nevada	6		
Arizona	18	1	N. Hampshire	495		
Arkansas	445	25	New Jersey	186		
California	305	6	New Mexico	26		
Colorado	99	4	New York	1169	14	
Connecticut	168	4	North Carolina	581		
Delaware	43		North Dakota	93		
Dist. Columbia	8		Ohio	864	11	
Florida	167		Oklahoma Ter	208		
Georgia	474	18	Oregon	262		
Idaho	100	4	Pennsylvania	993	18	
Illinois	410		Rhode Island	27		
Indian Ter	72		S. Carolina	238		
Indiana	506		South Dakota	100		
Iowa	304		Tennessee	635	4	
Kansas	146		Texas	368	4	
Kentucky	558		Utah	55		
Louisiana	218		Vermont	342	2	
Maine	527		Virginia	443	1	
Maryland	186		Washington	407		
Massachusetts	472	2	West Virginia	446		
Michigan	734		Wisconsin	396		
Minnesota	356		Wyoming	15		
Mississippi	376		Manitoba	29		
Missouri	429					
Montana	69			8384	54	
Nebraska	140			7705	93	
	7705	93		16089	147	

1486 Q So far as you examined R. G. Dun & Company's book to ascertain whether any names with this mark opposite to them on the right appeared in Dun & Company's book or not, you found it to be correct, did you? A I found that it didn't appear.

Q You say that you found some towns in Exhibit 9 which you didn't find in R. G. Dun & Company's book, did you? A Yes, sir.

Q Were those towns marked in Exhibit 9 as not appearing in Dun & Company's book? A Yes, sir.

Q With this same kind of a mark? A Only in a different place in the majority of cases.

Q What do you mean when you say in a different place?

n of A. H. A It was checked with the cross up close to the name of the town in most instances.

Q But in every case you found a mark somewhere in Exhibit 9 as indicating that the town didn't appear in R. G. Dun & Company's book, did you? A Yes, sir.

Q Did you examine R. G. Dun & Company's book with reference to all of the 147 towns to see if they appeared in that book, or did not appear in that book? A Not in all instances.

Q Did you count the number of instances in which you did make an examination? A I did not.

Q How were the names which you say were checked in Exhibit 8 with a cross on the left and were rated in Ex-
1487 hibit 8 at "H", "G", "BC", "C", "B", "AA", "AAA" and "AAAA" distributed among the states? A They were distributed as follows:

(See schedule at end of depositon)

1488 Q Did you make any examination to see how the other names marked in Exhibit 8 with a cross in the left hand margin were rated except these that you have mentioned? A I don't understand that question.

Q You made no examination as to the rating of any other names checked in Exhibit 8 on the left hand margin, except these names to which you have testified? A No, sir.

Q You mean that you did not? A I didn't make any examination of any other names; that is what you mean?

Q Yes. A Yes, sir.

Q How are the names which you say are checked in Exhibit 8 in the left hand margin and rated at "7", "89", blank 1, blank 2, blank 3 and blank 3-1/2 and blank, distributed among the states? A They are distributed as follows:

(See schedule at end of deposition)

1489 Q You stated in your direct examination that these names were classified by the complainant as blank. A What ratings?

Q The names rated at "7", "89", blank 1, blank 2, blank 3, blank 3-1/2 and blank? A Yes, sir.

Q How did you know how they are rated by the complainant? A By comparing the Lumbermen's rating with the rating in the schedule opposite,—Dun's rating in the schedule opposite.

Q As given in ink? A In ink.

Q In Exhibit 8? A In the first right hand column.

Q You didn't make an actual examination of R. G. Dun & Company's reference book to see how these names were rated in that book, did you? A I did not, I took the schedule for it.

Q That is the schedule which you have mentioned? A Yes, sir.

Q Did you count these names, the names rated at "7" in Exhibit 8? A Yes, sir.

Q And the names rated at "89", blank 1, blank 2, blank 3, blank 3-1/2 and blank? A Yes, sir.

Q Yourself? A I did, sir.

Q Did any one assist you? A No, sir.

Q What do you mean when you say that you counted such names as appeared with R. G. Dun & Company's blank rating on the right? A In this book?

Q Yes. A I got it from my previous experience 1490 with the first book, Exhibit 9.

Q I have now shown you Exhibit 8. How do you ascertain from that book how these names which you say are rated in Exhibit 8 at "7", "89", blank 1, blank 2, blank 3, blank 3-1/2 and blank, are rated in R. G. Dun & Company's book? A They are rated the same in schedule in 9, that I went by, I established the fact that that was the case and checked it the same way in this book.

Q Then, as I understand you, you compared—to ascertain how those names were rated in R. G. Dun & Company's book, you referred to Exhibit 9? A In the previous testimony covers Exhibit 8.

Q But the previous testimony didn't give the rating of these names, did it? A No, but it says—

Q No, answer my question and we will understand each other more clearly. A Just put it again.

Q How did you determine how the names which you say are rated in Exhibit 8 at "7", "89", blank 1, blank 2, blank 3, blank 3-1/2 and blank, are rated in R. G. Dun & Company's book? A From the schedule given in Exhibit 9.

Q That is to say, you referred to Exhibit 9 to see how those names were rated in R. G. Dun & Company's book as shown by R. G. Dun & Company's ratings given in Exhibit 9? A No, sir. My experience in working with Exhibit 1491 9 gave me a key to Exhibit 8 which was the only key I could go under they had no schedule in this book and from what I understand of the testimony these marks here signify,—have the same significance.

ıa of A. H.

Q What marks? A The crosses and these marks, this line and these crosses.

Q That is the long dashes at the right of a name have what,—the same significance as what? A As the cross at the right of the name in that book, in 9.

Q That is, you took these long dashes at the right of the names, of certain names, these long dashes in lead pencil at the right of certain names in Exhibit 8, as indicating that the names to which the dashes are attached do not appear in R. G. Dun & Company's book? A Yes, sir.

Mr. Pease: You mean by "attached", opposite?

Mr. O'Connor: Yes.

Q You didn't make an examination of Dun & Company's book to see how these names were rated in it, did you? A Not in all instances.

Q And you didn't count the number of cases in which you did make an examination? A I did not.

Q With what book of R. G. Dun & Company's did you compare Exhibit 8? A That was a March.

Q What year? A 1901.

1492 Q So far as you did make an examination of R. G. Dun & Company's book, you found these marks to be correct, did you, as indicating that the names were not in R. G. Dun & Company's book? A Those at the right?

Q Yes, the dashes? A Yes, sir.

Q You counted the marks alone, did you? A I did, sir.

Q How did you count the names marked with a cross in Exhibit 9 in the right hand margin, directly from Exhibit 9, or from a copy? A Right directly from Exhibit 9.

Q Did I understand you to say that you put these marks in another book? A No, sir.

Q Did I understand you to say that you checked certain names in another book in— A Not in that connection. Not in that book.

Q I mean in a copy of this book, in a copy of Exhibit 9? Did you make any marks in a copy of Exhibit 9? A Yes, sir.

Q What marks did you make in a copy of it? A Red cross.

Q Where? A In the same position opposite the name as if appears in Exhibit 9.

Q That is, you checked in a copy of Exhibit 9 in red ink

on the right, the same names that are checked in Exhibit 9? A Yes, sir. Deposition Tuttle

Q With a cross in black ink? A Red ink. O, as 1493 shown there in black ink, yes, sir.

Mr. Peasr: Or pencil?

A Or pencil.

Q Did you do that before or after you counted the names? A Before.

Q And did you count the names with this cross on the right of them from Exhibit 9 or from the copy of it which you made? A From the original.

Q Did you make a copy of Exhibit 8 or any part of Exhibit 8? A Which Exhibit do you mean?

Q Exhibit 8, it is July, 1901,—did you? A What do you mean I made a copy of?

Q Did you make a copy of this book or any marks in it in any other book, in a copy of it?

Mr. Pease: In another edition of it?

Q Did you do any work on any copy of this July, 1901 book? A Yes, I did some work in that book.

Q Not in that copy of it, did you do any work in a copy of this book?

Mr. Pease: Did you do any work in Exhibit 141?

A I did not.

Q Did you do any counting from any copy of this Exhibit 8? A I did.

Q What counting did you do from it? A The total names checked.

Q Checked how?

1494 Mr. Pease: Wait a minute. He is asking you if you counted from the copy.

A I did not count from the copy, I counted from the original.

Q I asked you whether you did any counting from any copy of Exhibit 8? A I did it from the original.

Q Now answer my question, did you do any counting at all? A I did.

Q From a copy of Exhibt 8? A I did.

Q What counting did you do? A I counted the names checked at the left.

Mr. Pease: Do you want to correct your statements?

A Yes, original Exhibit 8.

Mr. Pease: What do you mean by that?

Mr. O'Connor: Just a moment.

of A. H. Q Look at these books which I show to you, one called Defendants' Exhibit 140 and the other called Defendants' Exhibit 141; did you do any work on either of those two books? A I did on 140.

Q What work did you do on it? A I made the red cross at the right of the names indicated there.

Q Did you do any other work on either of those two books? A No, sir.

Q Did you do any counting from either of those two books? A No, sir.

1495 *Re-direct Examination by Mr. Pease.*

Q Mr. Tuttle, have these names that are checked in the left hand column of Exhibit 9 and given a rating of "7", "89" blank 1, blank 2, blank 3, blank 3-1/2, any capital rating?

Mr. O'Connor: Objected to because the book itself is the best evidence.

A No, sir.

Q I mean in Exhibit 9? Any capital rating in Complainant's Exhibit 9? A Why, I don't quite understand that question.

Q I mean, have the names bearing these ratings which I have called your attention to, a capital rating, are they given a capital rating also?

Mr. O'Connor: Same objection.

A No, sir.

Q You were furnished with and looked over a copy of Mr. Stein's and Mr. Hubal's and Mr. Gallagher's and other witnesses' testimony who testified in this case for the complainant as to the manner in which the checking in Exhibits 8 and 9 was done, did you not? A Yes, sir, in portions where I thought it concerned me.

Q Did you learn from that testimony and from Mr. Clancy and myself as to the manner in which the names checked in the left hand margin in Exhibit 9 given these ratings "7", "89", blank 1, blank 2, blank 3, and blank 3-1/2 were
1496 counted or included in the count made by these witnesses for the complainant as blank ratings?

Mr. O'Connor: Objected to because the testimony is the best evidence of its contents.

A No, I formed my opinion largely from the exhibit, or rather the schedule which showed how they did rate them.

I knew after I got into it that Mr. Clancy and yourself were of the same opinion.

Q Didn't we tell you that?

Mr. O'Connor: Objected to as immaterial and calling for hearsay.

A Yes.

Q Did you also have the schedule, the same schedule or a copy of the schedule appearing in the testimony which Stein and these other witnesses did the checking by?

Mr. O'Connor: Objected to as immaterial, and leading.

A Yes, sir.

Q Is that true with reference to the count or classification which you made as to the purchasing department?

Mr. O'Connor: Same objections.

A Yes.

Q That is, you got all your information with reference to all of the work which you did from the same sources, did you not? A From the same sources, yes, sir.

Mr. O'Connor: What do you mean, same sources?

Mr. Pease: I mean Exhibit 9, testimony, Clancy and
1497 myself; that is, what is true with reference to blank 1, blank 2, blank 3 is true of all the work which he did.

Q You didn't attempt in your work to verify the checking which complainant's witnesses did and testified to, with the reference book of Dun & Company, did you?

Mr. O'Connor: Objected to as leading.

A Why, I did it sometimes to satisfy—

Q I mean as a whole? A O, no; no, sir.

Q In the comparisons which you made between complainant's Exhibit 8 and R. G. Dun's March reference book for 1901 with reference to the names checked at the left in the former book, what did you find, if anything, with reference to the difference in the name, style of the firm, spelling of the name, classification of business, if any?

Mr. O'Connor: Objected to, the witness has already explained what he did, and for the further reason that it is not re-direct examination.

A I found numerous instances of difference in classifications and the spelling of names.

Q Any with reference to the name or style of firms?

Mr. O'Connor: Same objection.

A Yes, sir.

Q Find any differences with reference to the spelling of towns?

(A. H. Mr. O'Connor: Same objection.

A Very rarely a difference in the spelling of towns.

1498 Q Did you make a list of such of the names when there was a difference—well, of any of the names, did you make a list of any of the names where you found a difference in the style of the firm, in the spelling of the name and in the classification of business?

Mr. O'Connor: Objected to as leading, as immaterial and because the books are themselves the best evidence of their contents.

A Yes, sir.

Q You haven't them with you, have you? A I have not.

Q What did you do in that memorandum with reference to such names?

Mr. O'Connor: Same objections.

A Why, I made a comparison of certain names and where they do business and the classification given by the Lumbermen's Credit Association and the classification given by Dun's and the difference in style of firm and spelling of individual names.

Q What exhibit did you make this comparison with?

Mr. O'Connor: Same objections.

A Eight.

Q Did you make these comparison with the Dun book itself?

Mr. O'Connor: Same objections.

A I did, sir.

Q What portion of the names checked did you com-

1499 pare in this way.

Mr. O'Connor: Objected to as immaterial and because the witness isn't speaking of his own knowledge, doesn't appear to have counted the number of names.

Q Well, a large or small proportion? A Small proportion.

Re-cross Examination by Mr. O'Connor.

Q Do you remember any of the names where you found a difference? A I do not.

Q Have you preserved a list of the names? A I have, sir.

Q Have you it with you? A I have not.

Mr. O'Connor: That is all.
Mr. Pease: That is all tonight.
Whereupon an adjournment was taken subject to notice.

1500 January 20, 1903.
10:30 o'clock A. M.

Met pursuant to adjournment.
Present, as before.

A. H. TUTTLE recalled for direct examination by Mr. Pease.

Q Have you with you a list of the names which you prepared showing the different classifications, and difference in names which you referred to when last upon the stand? A That is the list right there (indicating).

Q Just explain the manner in which you did this work?

Mr. O'Connor: Objected to because the books themselves are the best evidence of their contents.

A The first state is Alabama, and the first town is Alsboro, and the name checked in Exhibit 8 is Carmichael, G. F., the classification in the Lumbermen's Credit Association book is saw mill, the classification in R. G. Dun's book is general store.

Q How is it given in the Dun book? A "General G. S."

Q That means what? A General store.

Q And which Dun book did you compare the classification with? A March, 1901.

Q What did you put down under the columns headed "L. C. A." in each instance?

1501 Mr. O'Connor: Same objection.

A The classification that was found in the Lumbermen's Credit Association book.

Q Exhibit 8? A Exhibit 8.

Q What did you put down under the column headed "R. G. D."?

Mr. O'Connor: Same objection.

A The classification found in R. G. Dun's book, of March, 1901.

Q As given to what name? A As given to the name opposite.

Q Same name? A Yes.

Q Did you find any instance in which there was a difference in the name either in the spelling or style?

A. H. Mr. O'Connor: Same objection.

A Yes, sir.

Q What if any memoranda did you make of the differences in names?

Mr. O'Connor: Same objection.

A In the column of classification under "R. G. D." I put the name showing the difference in the name.

Q What did you put in the column marked R. G. Dun,—headed "R. G. D."?

Mr. O'Connor: Same objection.

A The difference in name and classification where there was a difference.

Q Did you put down the name as it appeared in the Dun book?

1502 Mr. O'Connor: Same objection.

A As it appeared in the Dun book.

Q And how did you write the names as they appeared in the column headed "name"?

Mr. O'Connor: Same objection.

Q As it appeared in what book? A As it appeared in the Lumbermen's Credit Association book.

Q Exhibit 8? A Yes, sir.

Q How are the names which appear on these different sheets indicated in Exhibit 8?

Mr. O'Connor: Same objection.

A I don't understand that.

Q Are they checked in any way? A They are checked in Exhibit 8.

Q Where? A At the left of the column.

Q Have you included in this list which you did all of the names checked on the left in Exhibit 8, in which there is any difference in the classification as appearing in Exhibit 8 and Dun's March book?

Mr. O'Connor: Objected to as leading and because the books are the best evidence of their contents.

A I have not.

Mr. Pease: We offer in evidence these sheets identified and referred to by the witness, numbered 1 to 28 inclusive.

Mr. O'Connor: Objected to as immaterial, incompetent and because the books to which these papers relate or
1503 which they purport to give the contents of or to contain data from, are the best evidence of their contents.

Mr. Pease: We ask to have these sheets fastened together and marked Defendants' Exhibit 142.

Q What if any examination and comparison did you make of Complainant's Exhibit 9 with the R. G. Dun reference book of September, 1901, with reference to names of towns appearing in the former which did not appear in the latter book?

Mr. O'Connor: Objected to because the books themselves are the best evidence of their contents.

A I made a comparison of several states.

Q What states? A Illinois is the first.

Q Just give us all the states which you compared? A Illinois, Indian Territory, Indiana, Iowa, Kansas and Kentucky.

Q How many of these names of towns did you find in Exhibit 9 which did not appear in R. G. Dun's September, 1901 reference book?

Mr. O'Connor: Objected to as leading and because the books are themselves the best evidence of that.

Q The number in each of these states? A I found 7 in Illinois and 2 in Indian Territory; 12 in Indiana; 10 in Iowa; 4 in Kansas and 8 in Kentucky.

Q Will you give us the names of these towns in each state? A In Illinois was Camp Grove, Caton Farm, 1504 Code, Normandy, Round Lake Speer and Zion City. In Indian Territory, Dodge, Cherokee Nation; South Canadian, Choctaw Nation. In Indiana, Bostons Corner, Caloway Foltz P. O., Doans, Foltz, Freeland, Indian Harbor, Kitchell, McKinley, Middleton, Midland, Toledo and Urmeyville. In Iowa, Bronson, Buckeye, Coulter, Garden City, Grove, Hauntown, Industry, Lawton, Pisga and Waupeton. In Kansas, Ezbon, Morrow, Olivet and Plains. In Kentucky, Arigo, Bethesda, Brady, Carrington, Cherry Grove, Culver, Pleasant and Silent Run.

Q State whether or not you have had time to complete an examination and comparison of these books with reference to these towns appearing in Exhibit 9, not appearing in the other books? A I haven't had time.

Q Have you had time to do any work of this character upon Exhibit 8 and the March, 1901, reference book of R. G. Dun & Company? A No, sir.

Cross-Examination by Mr. O'Connor.

Q Mr. Tuttle, are you in the employ of the Lumbermen's Credit Association? A Yes, sir.

H. Q How long have you been in its employ? A Since the last week of October.

Q For whom did you work before beginning to work for the Lumbermen's Credit Association? A The Jones Mercantile Agency, of Pittsburg.

Q Did you ever work for anybody in this city before 1505 you went into the employ of the Lumbermen's Credit Association? A Not for twenty-five years.

Q For what agency did you work in Pittsburg? A The Jones Mercantile Agency.

Q Did you make any comparison of the ratings given in R. G. Dun & Company's book and in the Lumbermen's Credit Association's book to the parties mentioned in this list which has been offered in evidence? A Not at the time I made that list.

Q Did you ever make a comparison of the ratings? A In some cases, as stated in the previous testimony.

Q That is the only comparison you have ever made of—of ratings.

Q —of ratings of parties appearing in the two books? A Yes.

Mr. O'Connor: That is all.

Mr. Pease: That is all.

1506 EX 9 B

	Wash	W Va	Wis	Wy	Man	
H		3	1			36
G		4	1			108
BC	6	21	42	1	5	1369
C	6	11	57	1	5	1068
B	3	5	30		2	738
AA	3	10	18	1	2	385
AAA	3	7	37	1		605
AAAA	2		49			467
Purchg Dep			1			1215
-7						69
-89						106
-1						163
-2						177
-3						190
-3½						47
—			1			897
	23	61	237	4	14	7640
Odd ratings, pages 2 to 9						177
						7817

1507

	Ala	Arz	Ark	Cal	Col	Conn	Del	Dist C	Fla
H	2		2			3			
G	8			2		1	1		2
BC	12		13	17	10	20	7		6
C	14		12	14	7	12	7	2	2
B	8		12	7	4	12	5		1
AA	4		6	12	2	5			3
AAA	15	1	7	25	2	7		4	5
AAAA	2	1	6	21	1	7	1	1	2
Purch Dep					12				
7			1	3					
89				1					
−1			4	18	1				
−2			5	15	1				
−3			3	8	1			1	
−3½									
—		7	36	33	11				
	65	9	107	177	52	67	21	8	21

1508	Mo	Mont	Neb	Nev	N H	N J	N M	N Y	N C
H					1			1	
G	2					3		7	1
BC	56	2	36		22	21	3	149	23
C	54	7	37		10	21		68	21
B	30	2	15		10	19	1	72	10
AA	6	1	3		6	13		42	3
AAA	33		1	1	5	9		63	5
AAAA	19	3	5		2	5		44	1
Purchg Dep	100		179				2		
7	1					7		24	
89	2		3		4	3	1	37	
−1	3		2		3	7	1	18	1
−2	1				16	7		50	
−3	1		1		10	5	1	58	
−3½	3				1	2		14	
—	20		6		20	16		296	1
	331	15	288	4	110	138	9	943	67

1509

	Ala	Arz	Ark	Cal	Colo	Conn	Del	Dist C	Fla
H	2		1	1		3			3
G	3		5	2					1
BC	10		13	16	9	19	6		7
C	8	1	1	11	6	12	5	1	3
B	7		7	12	3	9	5		1
AA	2		2	12	1	5	1		2
AAA	6	1	6	30	2	4		5	2
AAAA			4	20	1	5	1	1	2
Purchg Dep				1	14				
7			1	1	1	2			2
89	1		2				1		3
−1	1		8	14	1	2	3		5
−2	15	1	8	18	1	2			6
−3	3		5	12	1	3	2		3
−3½	2								2
—	20	6	40	38	6	10	4		25
	80	10	106	188	46	76	28	7	71

Odd ratings at bottom of pages 1 to 4, Inc

A EX 9

Conn	Del	Dist C	Fla	Ga	Idaho	Ill	Ind T	Ind	Ia	Kan	Ky	La	Me	Md	Mass	Mich	Minn	Miss	
3	.....	.....	.....	1	.....	.....	1	.....	.....	.....	1	.....	3	.....	2	1	.....	.....	17
1	1	.....	2	1	.....	1	.....	1	1	.....	5	3	14	2	4	4	2	5	57
20	7	.....	6	20	2	110	2	82	71	36	23	17	18	23	48	63	20	8	622
12	7	2	2	9	3	106	2	60	73	40	19	6	11	16	18	48	28	13	522
12	5	.....	1	15	.....	65	2	50	32	18	8	8	9	13	20	39	14	11	353
5	.....	.....	3	9	.....	40	.....	25	11	3	2	2	3	4	11	24	9	2	177
7	.....	4	5	8	.....	56	4	26	14	6	6	9	8	9	19	44	16	4	295
7	1	1	2	2	.....	57	.....	15	14	5	5	9	5	5	6	54	25	3	343
.....	.....	.....	.....	.....	.....	67	34	34	383	158	2	.....	.....	.....	.....	.....	1	.....	691
.....	.....	.....	.....	.....	.....	4	.....	8	.....	1	3	.....	.....	2	1	.....	.....	.....	23
.....	.....	.....	.....	.....	.....	5	1	1	.....	.....	3	2	.....	1	.....	.....	.....	.....	14
.....	.....	.....	.....	.....	.....	23	.....	5	10	5	7	4	2	4	.....	.....	.....	.....	83
.....	.....	.....	.....	.....	.....	10	.....	2	2	2	1	6	.....	7	.....	.....	.....	.....	51
.....	.....	1	.....	.....	.....	17	1	9	3	2	2	4	.....	3	.....	.....	.....	1	55
.....	.....	.....	.....	.....	.....	11	.....	4	.....	.....	2	.....	.....	.....	.....	.....	.....	.....	17
.....	.....	.....	.....	.....	1	65	4	75	11	6	24	34	1	17	.....	1	.....	1	327
67	21	8	21	65	6	637	51	397	625	278	113	101	74	106	129	278	115	48	3547

J	N M	N Y	N C	N D	Ohio	Ok Ter	Ore	Pa	R I	S C	S D	Tenn	Tex	Utah	Vt	Va	
.....	.....	1	.....	.....	1	.....	.....	1	.....	3	.....	.....	.....	1	2	3	15
3	.....	7	1	1	5	.....	7	8	.....	2	.....	3	1	1	3	2	46
21	3	149	23	5	100	3	2	152	5	7	6	20	27	5	10	18	672
21	.....	68	21	3	70	4	1	89	4	7	7	9	18	7	6	23	466
19	1	72	10	6	43	.....	.....	81	5	.....	2	14	15	1	7	12	345
13	.....	42	3	1	22	1	4	47	3	3	.....	4	5	.....	2	8	174
9	.....	63	5	2	37	.....	4	64	2	2	.....	11	12	2	2	4	262
5	.....	44	1	.....	37	.....	.....	41	.....	1	.....	1	7	.....	2	5	173
.....	2	.....	.....	94	3	50	.....	.....	.....	.....	95	.....	.....	.....	.....	.....	523
7	.....	24	.....	1	5	.....	.....	7	.....	1	.....	.....	.....	.....	.....	.....	46
3	1	37	.....	1	17	.....	1	19	.....	4	.....	.....	.....	.....	.....	.....	92
7	1	18	1	1	13	1	6	23	.....	1	.....	.....	.....	.....	.....	.....	80
7	.....	50	.....	1	11	.....	5	28	.....	6	.....	.....	.....	1	.....	.....	126
5	1	58	.....	1	19	.....	5	27	.....	6	1	.....	.....	.....	.....	.....	135
2	.....	14	.....	.....	4	1	.....	3	.....	2	.....	.....	.....	.....	.....	.....	30
16	.....	296	1	7	45	1	28	97	.....	23	8	.....	.....	1	.....	.....	569
138	9	943	67	124	433	61	63	687	19	68	119	62	86	18	34	75	3754

EX 8

nn	Del	Dist C	Fla	Ga	Idaho	Ind	Ind T	Iowa	Kan	Ky	La	Me	Md	Mass	Mich	Minn	Penn	
3	.....	.....	3	3	.....	.....	1	.....	.....	2	.....	1	.....	1	.....	.....	1	19
.....	.....	.....	1	1	1	1	.....	1	1	6	1	5	.....	2	5	.....	5	40
19	6	.....	7	17	.....	84	2	56	37	21	6	20	20	36	59	6	72	516
12	5	1	2	6	3	61	1	79	36	15	6	8	14	16	50	15	43	403
9	5	.....	1	14	.....	57	4	32	12	7	5	6	11	16	36	7	34	280
5	1	.....	2	11	1	27	.....	8	4	2	1	4	2	8	27	4	14	137
4	.....	5	7	3	.....	21	2	14	2	7	11	6	7	21	44	9	17	225
5	1	1	2	3	.....	14	.....	14	1	3	7	5	7	6	56	14	17	182
.....	.....	.....	.....	.....	.....	17	31	349	150	3	.....	.....	.....	.....	3	132	.....	700
2	.....	.....	2	2	.....	5	.....	.....	2	4	.....	4	4	5	8	.....	6	47
.....	1	.....	3	2	.....	.....	.....	.....	1	5	.....	6	1	3	11	.....	6	42
2	3	.....	5	7	2	3	1	6	5	5	5	8	2	6	13	1	17	115
2	.....	.....	6	21	1	1	1	1	1	2	6	5	3	20	14	4	13	144
3	2	.....	3	10	3	12	1	4	1	2	3	12	2	18	10	1	18	135
.....	.....	.....	2	.....	.....	4	.....	.....	.....	1	.....	.....	3	2	2	.....	3	19
10	4	.....	25	37	8	64	6	4	3	30	35	19	13	37	89	13	60	567
76	28	7	71	137	19	371	50	568	256	115	86	109	89	197	430	206	326	3571
																		94
																		3665

1510 BURTON W. STADDEN recalled for direct examination by Mr. Pease.

Q Mr. Stadden, have you with you the supplements which were issued by the Lumbermen's Credit Association to their January, 1901 and July, 1901, reference book?

Mr. O'Connor: Objected to as immaterial.

A I have.

Q Are these the supplements (handing witness papers)?

Mr. O'Connor: Objected to as immaterial.

A These are the supplements referred to.

Q Were they issued to your subscribers in that form?

Mr. O'Connor: Objected to as immaterial.

A They are furnished to each subscriber.

Q At or about the time they are issued?

Mr. O'Connor: Objected to as immaterial, and because the witness isn't shown to have delivered them to the subscribers and isn't shown to be speaking of his own knowledge.

A At or about the time they were issued.

Q Well, how were they sent to the subscribers, if you know?

Mr. O'Connor: Objected to as immaterial.

A They were sent by mail properly addressed to each subscriber.

Q In the usual—

Mr. O'Connor: Same objections.

A In the usual course of business. I have seen many of
1511 them in the offices of subscribers myself.

Mr. O'Connor: Did you mail them yourself?

A I did not.

Mr. O'Connor: Did you go with the party who did mail them?

A No, sir.

Mr. O 'Connor: To see that they were mailed?

A No, sir.

Mr. O'Connor: Then you don't know of your own knowledge, that they were mailed?

A I would only know from seeing a great many of them in the offices of subscribers, that they were received.

Q What if any use is made of the information contained in these supplements in compiling the reference book immediately following each of these supplements?

Mr. O'Connor: Objected to as immaterial.

A The information contained in the June supplement is transferred to the July edition of the reference book of the

Lumbermen's Credit Association, and the information contained in the December supplement is transferred to the January edition of the reference book of the Lumbermen's Credit Association.

Q Does that include the new names and reference ratings?

Mr. O'Connor: Objected to as immaterial and because the books themselves are the best evidence of their contents.

A It includes the new names and also includes the
1512 references that are made to headquarters for the ratings on concerns known by us as line yard or country yard concerns,—contains all that information.

Mr. Pease: I offer these two supplements in evidence as Defendants' Exhibits 143 and 144.

Mr. O'Connor: Objected to as immaterial. These exhibits 143 and 144 are simply offered as samples of the supplement issued by the Lumbermen's Credit Association, is that correct?

Mr. Pease: That is all, yes.

Mr. O'Connor: That is, there is nothing, no particular matter in them to which you want attention called?

Mr. Pease: No, they are simply offered for the purpose of showing—

Mr. O'Connor: The general character of the supplements?

Mr. Pease: The general character of the information and the number of changes, or items of changes that are made between each issue of the book.

Mr. O'Connor: I didn't want any book introduced that contained any particular matter to which you would call the Court's attention, unless you called my attention to it.

Q Have you with you a copy of the Tradesman, publication, which you have heretofore testified as having been subscribed for and received by the Lumbermen's Credit Association for a number of years for January, 1902?

Mr. O'Connor: Objected to as immaterial.

1513 A I have.

Q About what time in the month is this publication received?

Mr. O'Connor: Objected to as immaterial.

A It is received early in the month.

Q Well, what do you mean by that?

Mr. O'Connor: Same objection.

A About the first part of the month.

Mr. Pease: We offer this in evidence also as Defendants' Exhibit 145.

Mr. O'Connor: Objected to as immaterial. For what purpose do you offer it?

Mr. Pease: To show one of the sources of our information.

Mr. O'Connor: Is there any particular matter in it to which you intend to call the Court's attention?

Mr. Pease: No.

Mr. O'Connor: Simply as a sample of the magazine?

Mr. Pease: Simply one of the sources of information from which we get new names and lists of concerns that are in the lumber business.

Mr. O'Connor: We object to it as immaterial and incompetent.

Mr. Pease: That is all.

Mr. O'Connor: That is all.

1514 ABRAHAM L. KNEFLER recalled for direction examination by Mr. Pease. Deposit Abra Knef

Q What if any comparison did you make of the names checked on the left in Exhibit 9, having no capital rating, with the same name appearing in the September, 1901, reference book of R. G. Dun & Company?

Mr. O'Connor: Objected to as immaterial and because the books are themselves the best evidence of their contents.

A Such names appeared with a blank capital rating and a credit rating, noted by their figures, I compared those with our blank—with the January, 1902 edition of the Lumbermen's Credit Association, blank ratings, and where the Lumbermen's Credit Association rated a firm or name blank and R. G. Dun & Company rated them blank, blank 1½, blank 2, blank 3, or blank 4 I checked as dissimilar.

Q Did you take only the names in Exhibit 9 which had a blank capital and pay rating?

Mr. O'Connor: Same objection.

A Yes, sir.

Q Now of such names in Exhibit 9 how many did you find having a rating, blank 4 in the Dun book?

Mr. O'Connor: Same objection.

A There were 204 such names.

Q How many had a blank 3 rating?

Mr. O'Connor: Same objection.

A There were 261.

1515 Q And how many had a blank 2 rating?

Mr. O'Connor: Same objection.

A 54.

Q How many had a blank 1½ rating?

Mr. O'Connor: Same objection.

A Six.

Q How many had blank 1?

Mr. O'Connor: Same objection.

A None.

Q As to what states did you make this examination?

Mr. O'Connor: Same objection.

A Arizona—

Q How many of these names were given a rating of blank 4, blank 3, blank 2 and blank 1½ in the Dun book in the states which you made the comparison of?

Mr. O'Connor: Same objections.

A In the following:

1516

States	—4	—3	—2	—1½
Arizona	1	2		
Arkansas	3	2	1	
California	11	20	7	1
Colorado		3		
Illinois	14	28	7	1
Indiana	10	19	3	
Indian Ter	1	1		
Iowa	1	8		
Kansas	1	4		
Kentucky	4	9	1	
Louisiana	4	6	1	
Maryland	4	3		
Missouri	3	6	1	1
Nebraska	2	3		
New Hampshire	13	6	1	
New Jersey	11	10	2	1
New York	64	47	10	1
North Dakota	3		1	
Ohio	7	18	2	
Oregon	13	3		
Pennsylvania	25	57	17	1
South Carolina	7	4		
South Dakota	2	2		
	204	261	54	6

1517 Q What if any examination and comparison of the capital ratings given the names checked on the left in Exhibit 9, did you make with the same name in the September, 1901, reference book published by R. G. Dun & Company?

Mr. O'Connor: Objected to as immaterial and because the books are themselves the best evidence of their contents.

A I examined these names to see that—

Q Examined certain names? A Examined certain names, such names as were checked, to see if the ratings which were marked as similar were so.

Q Were in fact the same? A Were in fact the same.

Q How many if any of such names did you find a difference in the capital ratings? A About 160.

Q Did you keep a record or memorandum of such names and ratings?

Mr. O'Connor: Same objection.

A I did.

Q Have you that memorandum with you, or record?

Mr. O'Connor: Same objection.

A Yes, sir.

Q Is this it (showing witness papers)?

Mr. O'Connor: Same objection.

A It is.

Q Just explain how you did this work?

Mr. O'Connor: Same objection.

1518 A Well, I took such names as were checked as having the same rating in the Complainant's Exhibit 9—

Q Where were they checked? A On the left hand side of the name. Where I found a difference I made the memorandum as stated, and verified these ratings with the January, 1902, edition of the Lumbermen's Credit Association's reference book and the September, 1901, edition of R. G. Dun & Company's book.

Q Now in what manner did you make up this record, explain by taking the first name.

Mr. O'Connor: Same objection.

A I took the first name in the first state that I worked on, where I found such a discrepancy—

Q What did you first put down? A The name of the town and state.

Q Then what next? A The name of the party, firm or company; next column is the rating in the January, 1902 edition of the reference book of the Lumbermen's Credit Asso-

ciation, and the column following the ratings appearing in the September, 1901 edition of the reference book of R. G. Dun & Company.

Q In what manner are these columns headed respectively?

Mr. O'Connor: Same objection, and because the paper itself is the best evidence of its contents.

A L. C. A., Jan. 1902, R. G. D. & Co., Sept. 1901.

Q What do the figures in ink under the letters in each 1519 of these columns indicate?

Mr. O'Connor: Objected to as immaterial.

A They represent the capital rating in figures.

Q As represented by what?

Mr. O'Connor: Same objection.

A As represented by the key of the respective books.

Q Mr. Knefler, did you find any ratings in Exhibit 9 in which the letter indicating the rating had been changed with pen and ink? A I did.

Q What?

Mr. O'Connor: Objected to because the book is the best evidence of its contents.

A Meridian Sash & Door Company, of Meridian, Mississippi. On Complainant's Exhibit number 9 the rating which appeared in print was "F", this was changed to "E".

Q What does the letter "F" in the Lumbermen's Credit Association indicate?

Mr. O'Connor: Objected to because the key itself is the best evidence of its contents.

A An estimate of responsibility of from two to three thousand dollars.

Q What does the letter "E" indicate?

Mr. O'Connor: Same objection.

A Three to five thousand.

Q Did you find any other rating changed in ink?

Mr. O'Connor: Same objection, the book itself is the 1520 best evidence of its contents.

A I did.

Q What? A The case of Fife & Childs, Wolcott, Vermont, in the reference book of the Lumbermen's Credit Association of January, 1902.

Q Exhibit 9? A Exhibit 9, the "R" appearing against this name.

Q How? A In print, was changed to "B".

Q What does the "R" indicate? A Nothing, it was a typographical error.

Q What does the "B" indicate?

Mr. O'Connor: Objected to because the key is the best evidence.

A Of the Lumbermen's Credit Association?

Q Yes. A Twenty-five to thirty thousand dollars.

Q Do you recall the rating given in R. G. Dun & Company's book in each of these cases?

Mr. O'Connor: Objected to because Dun & Company's book is the best evidence of its contents.

A The rating against the Meridian Sash & Door Company, Meridian, Mississippi, in the R. G. Dun & Company reference book of September, 1901, was "H".

Q What does that indicate according to the Dun key? A Three to five thousand dollars.

Q And what was the rating given in R. G. Dun &
1521 Company's book in the other case? A "E".

Q What does that indicate according to their key? A Twenty to thirty-five thousand dollars.

Q State whether or not you verified each of the ratings given in this list of names, contained on five sheets, with the books referred to?

Mr. O'Connor: Objected to as immaterial and because the question calls for the witness' conclusion.

A I did.

Mr. Pease: We offer these five sheets referred to and identified by the witness in evidence as Defendants' Exhibit 146.

Mr. O'Connor: Objected to as immaterial, incompetent and because the books to which these papers relate are themselves the best evidence of their contents.

Q Did you make any examination and comparison of the names checked on the left in Complainant's Exhibit 9, being the Lumbermen's Credit Association book for January, 1902, with the same names in R. G. Dun & Company's September, 1901 reference book as to the classification given those names in each of the books referred to?

Mr. O'Connor: Objected to as immaterial and because the books themselves are the best evidence of their contents.

A I did.

Q What if any record or memorandum did you make of the classifications given such names in each book?

1522 Mr. O'Connor: Same objections.

A I took the town and state, such states as I worked on, taking them in order and the first name that I found checked as the same—

Q The same what? A My understanding was it was the same rating.

Q Capital rating? A Same capital rating.

Q Where were these names checked? A On the left hand side of the name.

Q Now just tell us what you did and how you make the record? A Well, I made a notation or rather noticed the classification as it appeared in the September, 1901, edition of the reference book of R. G. Dun & Company and the classification as it appeared in the January, 1902 edition of the Lumbermen's Credit Association reference book.

Q That is, the same name? A The same name.

Q What if anything did you do where you found a difference in the classifications given such names? A I made a memorandum of it.

Q Have you the memorandum with you here? A I have.

Q Is this is (showing witness papers)?

Mr. O'Connor: Objected to as immaterial and because the books themselves are the best evidence of their contents.

A It is.

Q Where did you place the classification given such

1523 names in the Lumbermen's Credit Association's reference book Exhibit 9? A In the third column.

Q Headed what? A Headed, L. C. A.

Mr. O'Connor: Objected to because the paper itself is the best evidence of its contents, if proper evidence.

Q Where did you place the classification?

Mr. O'Connor: Same objection.

Q Given such names in the R. G. Dun & Company book referred to?

Mr. O'Connor: Same objection.

A In the fourth column where any appeared.

Q That column is headed what?

Mr. O'Connor: Same objection.

A R. G. D. & Co.

Q Did you transfer to this sheet the classifications just as they appeared in the respective books?

Mr. O'Connor: Same objection.

A I did.

Q Does this memorandum include the names checked on the left in Complainant's Exhibit 9 in which there was a different classification given the same name in each of the books referred to?

Mr. O'Connor: Objected to as immaterial and because the books themselves are the best evidence of their contents.

A It does.

Q Mr. Knefler, did you take any notice or make any
1524 memorandum of the difference in the names, spelling, and style of the firms?

Mr. O'Connor: Objected to.

A I did not.

Q Did you examine and compare each and all of the names checked on the left in Exhibit 9? A I did.

Mr. Pease: We offer in evidence the sheets containing the memoranda or record referred to by the witness numbered 1 to 40 inclusive, as Defendants' Exhibit 147.

Mr. O'Connor: Objected to as immaterial and because the books themselves are the best evidence of their contents.

Q What if any examination and comparison did you make of the names checked on the left in Complainant's Exhibit 9 having no ratings but referring to another place as to the capital rating given those names at the place referred to in Complainant's Exhibit 9, with the rating given the same person, firm or corporation at the town referred to in R. G. Dun & Company's September, 1901, reference book?

Mr. O'Connor: Objected to as immaterial and because the books themselves are the best evidence of their contents.

A I took such names as were checked in the states upon which I worked as having a similar reference, turned to the town to which reference was made; that is, wasn't always a town, sometimes it was a name in the same town, and where I found the rating was different I made a memorandum of it.

1525 Q Well, what books did you examine with reference to the ratings given these names at headquarters?

Mr. O'Connor: Objected to as immaterial and because the books themselves are the best evidence of their contents.

A The January, 1902, edition of the Lumbermen's Credit Association's reference book, and the September, 1901, edition of the reference book of R. G. Dun & Company.

Q Did you find any such names which were given a different rating at the towns referred to in each book?

Mr. O 'Connor: Same objections.

A A number of them.

Q What if any record or memorandum did you make of such names?

Mr. O'Connor: Same objections.

Q The one I have before me.

Q In what states did you make this examination? A The states shown in this memorandum.

Mr. Pease: We offer this memorandum referred to by the witness in evidence as Defendants' Exhibit 148.

Mr. O'Connor: Objected to as immaterial and because the books themselves are the best evidence of their contents.

Q Did you do any of the same kind of work on Exhibit 8? A I did.

Q And did you keep the same kind of a memorandum or record?

Mr. O'Connor: Objected to as immaterial and because the books themselves are the best evidence of their contents.

1526 A I did.

Q Have you that memorandum or record here?

Mr. O'Connor: Same objection.

A I have.

Mr. Pease: We offer this memorandum in evidence as Defendants' Exhibit 149.

Mr. O'Connor: Same objections.

Q Were you able to complete this work on Exhibit 8? A No.

Q Did you complete it on Exhibit 9? A No.

Q Did you complete this work as to all the states in Exhibit 9? A No, sir.

Q Why not? A Lack of time.

Cross-Examination by Mr. O'Connor.

Q You spoke of a change in the rating of two firms, the Meridian Sash & Door Company, of Meridian, Mississippi, and Fife & Childs, of Wolcott, Vermont. A Yes, sir.

Q You said, as I understood you, that the printed rating had been changed? A Yes, sir.

Q And a correction made in ink? A Yes, sir.

Q Do you know when that change was made in the book? A I do not.

Q Do you know whether that change was made in all
1527 the books that were issued to subscribers before the books were issued to the subscribers or not? A It was not.

Q Do you see the books that are issued to the subscribers when they are delivered to the subscribers? A I saw them leave the bindery.

Q Did you examine them in the bindery? A No, not every one.

Q Did you examine any of them in the bindery? A Yes.

Q Did you look at these two names in any of them, in the bindery? A I did not.

Q Then you don't know whether this change was made in the ratings of these two names before the books left the bindery and were delivered to the subscribers or not, do you? A I would likely know something about it, but I don't know positively.

Q Why would you be likely to know if any change was made in the names? A Well, if a thing of that kind had been discovered it would have required the services of every one to make the correction, every one available, in 2000 books, —1500 to 2000 books, and I know that I wasn't called upon.

Q Might not the change have been made by the other parties in your office? A Not likely.

Q Might it not have been done? A Hardly without my having some knowledge.

1528 Q Might not the change have been made in the bindery or elsewhere outside of your office? A Not likely; hardly possible.

Q You don't know who made the change? A No, sir.

Q You know nothing about it? A No, sir, except that it appeared changed in the number 9 Exhibit of the complainant.

Q In the rating of Fife & Childs the original printed rating was "R" you said? A "R", yes, sir.

Q Is there such a rating in the Lumbermen's Credit Association's key? A There is not.

Q Then it was a misprint, was it not? A It was.

Q What was the correct rating? A I don't know.

Q You don't know when that error was corrected, do you? A I do not.

of L.

Q You don't know in how many books it was corrected, do you? A I do not.

Q You don't know then, whether it was corrected in any other books than this Exhibit 9 or not; answer my question yes or no. A No.

Q What was the correct rating of the Meridian Sash & Door Company? A I don't know.

Q "F" or "E"? A I don't know?

Q Did you compare all the names having a check or cross on the left in Exhibit 9, with the same names in R. G. Dun & Company's September, 1901, book? A I only com-

1529 pared where I found that the rating was different.

Q Well, in order to see whether the rating was different or not, you must have first compared the names in the two books, must you not? A It appears in the Exhibit number 9.

Q In Exhibit 9? A In Exhibit 9, the two ratings.

Q Both names? A Yes, sir, both ratings.

Q Both ratings? A Yes, sir.

Q And you compared such of the names as appear in Exhibit 9 and having different ratings? A I did.

Q Did you compare any of the names in Exhibit 9 appearing to have the same rating? A No, except in other work. Except in another line of work, I did in the classification.

Q In comparing the classifications did you compare the ratings? A No, not necessarily.

Q Did you in any cases? A Not that I think of.

Q Exhibit 9 being in the possession of the Lumbermen's Credit Association, at its office, and not being present so that we can refer to it, I will ask you, Mr. Knefler, if that exhibit shows R. G. Dun & Company's ratings and the Lumbermen's Credit Association's ratings given to every name that is checked on the left in Exhibit 9? A No.

Q Did you make any comparison of the ratings in cases where R. G. Dun & Company's ratings is not given in Exhibit 9 to any of the names checked on the left? A I did.

Q Did you compare all the names checked in Exhibit

1530 9 on the left where R. G. Dun & Company's rating is not given in Exhibit 9, with R. G. Dun & Company's book with reference to the rating? A No, not all.

Q How much of the names checked on the left to which R. G. Dun & Company's rating is given in Exhibit 9, did you compare with R. G. Dun & Company's book? A Well, in such cases I used the Lumbermen's Credit Association's Ex-

hibit number 140, which was a transcript of the Exhibit number 9, with the added ratings of R. G. Dun & Company's September, 1901, book.

Q Did you make that Exhibit 140 yourself? A I did not.

Q You had nothing to do with the transfer of R. G. Dun & Company's ratings to that Exhibit? A I did not.

Q In what cases did you make a comparison of the ratings given in R. G. Dun & Company's book and the Lumbermen's Credit Association's book?

Mr. Pease: In doing which work?

Q You say that as to the names to which R. G. Dun & Company's ratings are not given in Exhibit 9, you made a comparison of the ratings given to those names in the Lumbermen's Credit Association's book and the R. G. Dun & Company's ratings given to the same names in Exhibit 140? A Yes, sir.

Q Am I correct? A Yes, sir. Where I found that
1531 the name was properly checked in the Lumbermen's Credit Association's book Exhibit number 140.

Q What do you mean by properly checked? A I found that by turning back to the Complainant's Exhibit number 9, and saw that the name and ratings that I verified were checked in that exhibit, in Exhibit number 9.

Q Let me understand your testimony, Mr. Knefler. Let me understand just what you did. In Exhibit 9 you say that R. G. Dun & Company's ratings, as well as the Lumbermen's Credit Association's ratings are given to certain names? A Yes, sir.

Q To some of the names, that are checked on the left, but some of the names that are checked on the left do not bear R. G. Dun & Company's ratings in Exhibit 9? A Exactly.

Q As to those names which are checked on the left but do not bear R. G. Dun & Company's ratings in Exhibit 9 you made the comparison as to the ratings by Exhibit 140? A Yes, sir.

Q Did you compare in Exhibit 140 the ratings of all the names which are checked on the left but do not bear R. G. Dun & Company's rating in Exhibit 9? A No.

Q Which of them did you compare as to the ratings. A Where a difference was shown in the ratings.

Q Just as you made the comparison where the two ratings appear in Exhibit 9? A Yes, sir.

Q Did you make a comparison as to the ratings in
1532 cases where the names appeared to bear the same ratings in Exhibit 140? A No.

Q Did you compare the ratings in any cases where R. G. Dun & Company's ratings and the Lumbermen's Credit Association's ratings appeared to be the same either in Exhibit 9 or in Exhibit 140? A Not in that work.

Q Did you compare the ratings in such cases, that is where they appeared to be the same, incidentally, in connection with any other work? A No.

Q Then you have made no comparison, as I understand you, of ratings where the names appear either in Exhibit 9 or in Exhibit 140 as having the same ratings? A No.

Q Did anybody assist you in any of the work you did in making comparisons of ratings? A No, sir.

Q Did anybody assist you in preparing this paper marked Exhibit 146? A Mechanically?

Q In any way? A It wasn't written by me.

Q Did any one assist you in making a comparison of the two books? A No, sir.

Q Or rather, of the ratings? A No, sir.

Q How did you translate the keys? How did you know how much the letters of R. G. Dun & Company, and the letters of the Lumbermen's Credit Association meant? A I am familiar with the keys.

Q Of both? A Of both, yes, sir.

Q Did you have any key in writing? A No, sir.

1533 Q You did all of this work from memory? A Yes, sir.

Q From memory alone? A Yes, sir.

Q What does "F" in R. G. Dun & Company's key mean? A Ten to twenty thousand.

Q What does "E" in R. G. Dun & Company's key mean? A Twenty to thirty-five thousand.

Q What does "A" in R. G. Dun & Company's key mean? A Five hundred to seven hundred and fifty.

Q What does "G" in R. G. Dun & Company's key mean? A Five to ten.

Mr. Pease: Thousand?

A Thousand, yes.

Q What does "C" in R. G. Dun & Company's key mean? A 75,000 to 125,000.

Q What does "K" in R. G. Dun & Company's key mean? A One to two thousand dollars.

Q What does "D" in R. G. Dun & Company's key mean? A Thirty-five to fifty thousand dollars.

Q What does "K" in R. G. Dun & Company's key mean? A One to two thousand dollars.

Q What does "J" in R. G. Dun & Company's key mean? A Two to three thousand dollars.

Q What does "DX" in R. G. Dun & Company's key mean? A D plus is fifty to seventy-five thousand dollars.

Q What does "E" in R. G. Dun & Company's key mean? A Twenty to thirty-five thousand dollars.

1534 Q What does "B" in R. G. Dun & Company's key mean? A Two to three hundred thousand dollars.

Q What does "L" in R. G. Dun & Company's key mean? A Under one thousand.

Q What does "M" in R. G. Dun & Company's key mean? A Under $500.

Q What does "N" in R. G. Dun & Company's key mean? A I don't know it.

Q What does "AA" in R. G. Dun & Company's key mean? A "AA"?

Q Yes. A Over a million. A million or over.

Q What does triple A mean? A There is no triple A as to capital rating.

Q When did you begin this work? A The work that we have in hand here?

Q Yes. A Within the last two weeks, that is as nearly as I can say.

Q Last two weeks? A Within the last two weeks.

Q Did you commit R. G. Dun & Company's key to memory before you began it? A Yes, sir. I was with them for eight years and I was familiar with it.

Q You didn't commit it to memory for this special work? A No.

Q You were familiar with it when you began this work? A Yes, sir.

1535 Q And how long before you went to work for the Lumbermen's Credit Association did you work for R. G. Dun & Company? A Well, some eight years, off and on.

Q How long before you entered the employ of the Lumbermen's Credit Association did you work for R. G. Dun & Company? A I left R. G. Dun & Company to enter the employ of the Lumbermen's Credit Association.

Q How long before you began this work to which you have just testified, did you last work for R. G. Dun & Company? A About three and a half years or over.

Re-direct Examination by Mr. Pease.

Q What if anything did you have to do with shipping the January, 1902 reference books of the Lumbermen's Credit Association, Mr. Knefler? A Well, I assisted.

Q Where were they shipped from? A From the office of the Lumbermen's Credit Association.

Q Weren't they shipped direct from the bindery, the 1902 edition? A July, 1902, was, not January.

Q Were any changes or corrections made in these books in ink, to your knowledge, after they came from the bindery and before they were shipped to the subscribers?

Mr. O'Connor: Objected to as immaterial.

A Not to my knowledge.

Q Would you have known whether such changes were made in the books or not?

Mr. O'Connor: Objected to as immaterial and calling 1536 for a conclusion.

A I would have been very likely to have known.

Q With what book did you compare the capital ratings given the names referred to in your testimony, in the work which you did? A The work that I did on Exhibit number 9, I verified by the September, 1901, edition of R. G. Dun & Company's reference book. The work that I did on Exhibit 8 I verified by the March, 1901, edition of R. G. Dun & Company's reference book.

Q How about the work which you did on Exhibit 140? A Work that I did on Exhibit 140? Well, in the first place I verified the check mark by referring to—

Mr. O'Connor: When you say verified, you mean you compared?

A No, I mean that I saw that it had been properly transcribed, the check marks from Complainant's Exhibit 9 to Lumbermen's Credit Exhibit number 140, and if it has been I verified these ratings, the R. G. Dun & Company ratings by their September, 1901, edition.

Re-cross-Examination by Mr. O'Connor.

Q Where did you get R. G. Dun & Company's ratings in their September, 1901, edition? A From a copy of the book.

Q Did you make the comparison directly with R. G. Dun & Company's book? A Directly, yes, sir, in all cases.

Q What do you mean by all cases? A Wherever I
1537 made the comparison.

Q And you made the comparison as I understand you, only in cases where there appeared to be a difference in the two ratings as they appeared in Exhibits 8 and 9 or Exhibits 140 and 141? A 140; not 9 and 140, yes, sir.

Re-direct Examination by Mr. Pease.

Q Well, now, what ratings in these books, in this examination did you treat as different? A Those that were absolutely different.

Q Did you notice any changes in ink in Exhibit 9 when you commenced working on it?

Mr. O'Connor: Objected to as immaterial and because the book is the best evidence of its contents.

A Yes, casually, not in connection with my work. I noticed some changes in names had been made in ink.

Q Several?

Mr. O'Connor: Objected to as leading.

A A number, yes, sir.

Q Were these changes made against the names that were checked on the left, far as you noticed?

Mr. O'Connor: Same objections.

A I presume they were, I couldn't say positively.

By Mr. O'Connor:

Q Mr. Knefler, did I understand you to say that you actually referred to R. G. Dun & Company's book in
1538 making the comparison of ratings? A Yes, sir.

Q Then in every case where you made a comparison of ratings you verified R. G. Dun & Company's rating as it appeared in Exhibit 9 and Exhibit 140 with R. G. Dun & Company's book, did you? A Yes, sir.

Q How did they compare, that is, how did R. G. Dun & Company's ratings that appeared in Exhibit 9 and in Exhibit 140 compare with the ratings appearing in R. G. Dun & Company's book? A I don't recall any case where they were different.

By Mr. Pease:

Q Did you compare the rating appearing in Exhibits 9 and 140 with the rating in R. G. Dun & Company's book, as to any other names except the names appearing in Exhibit 146, and

this statement or schedule showing the blank 4, blank 3, blank 2 and blank 1½ ratings, appearing in the states named on that list? A Yes, in the classification I referred to it, verified them.

Q Did you make any comparison or pay any attention to the ratings given the other names checked on the left in Exhibits 9 and 140?

Mr. O'Connor: What other names?

Mr. Pease: I mean outside of the names appearing in the Exhibit 146 and these blank credit ratings?

Mr. O'Connor: Objected to because the witness has already answered the question.

1539 A Exhibit 148 I verified by the September, 1901 edition of R. G. Dun & Company's reference book.

Q As to what work? A Well—

Q As to what names did you verify the Dun ratings with their book as shown in Exhibit 9 and 140? A Such as were checked where I found the ratings to be different.

Q Did you verify the Dun rating given in those exhibits as to any other names? A I don't recall any.

Q You didn't verify each and every rating,—each and all of the Dun ratings given in Exhibits 9 and 140 to the names checked on the left, with the Dun book, did you? A No, not all of them.

The taking of further testimony is adjourned subject to notice.

1540 January 28, 1903. 2 P. M.

Met pursuant to adjournment.

Present:

Messrs. Atwood & Pease and
Mr. Thos. M. Hoyne.

A. H. TUTTLE, recalled on behalf of defendants, further testified as follows:

Direct Examination by Mr. Pease.

Q Mr Tuttle, did you finish checking the towns in Exhibit 140 which do not appear in the September, 1901, edition of the Complainants' reference book? A Yes, sir.

Q How many, if any, towns did you find in Exhibit 140

which do not appear in Dun's September, 1901, book? A Do you mean in the whole United States? Deposit H. T

Q Well, yes, in the remainder of the States which you had not examined, as testified to in your last examination.

Mr Hoyne: I object to this as immaterial.)

A 239.

Mr Pease: Q In what manner, if at all, did you mark or indicate those towns in this Exhibit 140? A I have a cross in red ink at the right of the town.

Q That is, immediately after the name of the town? A Yes, sir.

1541 Q Please give us the number of each of the States, if you have it in that form. A Louisiana, 15. Maine, 8. Maryland, 3. Michigan, 31. Minnesota, 10. Mississippi, 23. Missouri, 5. Nebraska, 1. Nevada, 1. New Hampshire, 6. New Jersey, 1. New Mexico, 2. North Carolina, 21. North Dakota, 4. Oklahoma Territory, 23. Oregon, 19. South Carolina, 6. South Dakota, 7. Utah, 2. Washington, 15. West Virginia, 23. Wisconsin, 10. Wyoming, 2. Manitoba, 1.

Q Are there names of lumber dealers or manufacturers given in Exhibit 140 in each of those towns? A Yes, sir.

Mr Hoyne: Objected to as immaterial.

Mr Pease: Q How many names of dealers and manufacturers are given in these towns in this Exhibit 140, if you know?

Mr Hoyne: Objected to.

A 330.

Mr Pease: Q Now what, if any, other checking have you completed, Mr Tuttle, since your last examination. A Why, I made a list of the towns in certain States in which Dun had checked part of the towns not in their September '01 book, and made the comparison direct from the Dun's September, 1901, and the L. C. A. January, 1902.

Q In which exhibit had that checking been done by the 1542 complainant? A In Exhibit 9.

Q And in what manner had the checking been done? That is, where was the check— A In black ink at the right of the town.

Q That is, immediately following the name of the town? A Yes, immediately following the name of the town.

Q And what did you find with reference to that work? A Why, I found 57 towns, representing 72 names, in the States where they had been checking the towns, that they failed to check.

of A. le.

Q That is, where the complainant had been checking? A Yes, sir.

Q Have you the names of those States? A Yes, sir.

Q Please give them, and the number in each. A Alabama, 1. Arkansas, 3. California, 2. Florida, 4. Georgia, 1. Massachusetts, 2. New York, 1. Ohio, 1. Tennessee, 18. Texas, 11. Vermont, 2. Virginia, 11.

Q In what manner did you check or indicate these amounts? A They are indicated the same as in the other exhibit, at the right of the name of the town.

Q In red ink? A In red ink.

Q In this Exhibit 9? A In Exhibit 140, taken from Exhibit 9.

1543 Q That is, compared with Exhibit 9? A Compared with the Dun's September 1901 book.

Q And Exhibit 9? A Yes, and Exhibit 9.

Q Now what, if any, other checking or comparison did you make since your last examination? A I checked with a cross in red ink at the right of the names in Lumbermen's Credit Association Exhibit 140, from page 22 in New Hampshire to page 71 in Pennsylvania. This is additional work.

Q What names did you check? A The names that were similarly checked in Exhibit 9.

Q You mean, similarly checked, you mean the same names? A The same names.

Q That was checked in Exhibit 9, you simply transferred the checking to the same name in Exhibit 140? A Yes, sir.

Q Now what, if any, other comparisons have you made, or checking? A Now the first question you asked me there as to the work I had done was in regard to checking the towns in Exhibit 140?

Q Yes, sir. A Well, that covers it all.

Cross-Examination by Mr. Hoyne.

Mr Tuttle, the check marks you refer to are put in Exhibit 140, are they? A Yes, sir.

Q In all of this checking you have referred to in your
1544 testimony to-day, is that right? A Yes, sir.

Q Is the check the same, the same mark in red ink? That is, have you checked these towns all in the same manner in red ink? A Yes, sir.

Q With a cross? A With a cross.

Q When you say in your testimony that you checked towns which did not appear in Dun's book, did you mean that you checked towns that did not appear to be checked in Dun's book or where the towns did not actually appear? A Well, I done both. In one exhibit—or one part of my testimony to-day states in which they did not do any checking of towns, and in another part of my testimony it is a list of States in which they done some checking but did not check them all.

Deposition H. Tut

Q But it was not your meaning that the names of those towns did not appear in R. G. Dun & Co.'s book, was it? A Yes, sir.

Q That was your meaning? A Yes, sir.

Q You mean to say that those towns that you have mentioned did not appear at all in R. G. Dun & Co.'s book? A Yes, sir.

Mr Pease: Q That is what you meant, that they don't appear in the Dun book? A Yes, sir.

1545 A. L. KNEFLER, recalled on behalf of defendants, further testified as follows:

Deposition Abraha Knefle

Direct Examination by Mr Pease.

Q Mr Knefler, have you looked over the transcript of your testimony given at the last hearing? A I have.

Q Is there any correction which you wish to make? A Yes.

Q What is it? A Well, on direct examination I was asked if I examined and compared each and all of the names checked on the left in Exhibit 9. I answered I did. As a matter of fact I did not.

Q Well, what did you do? A I used a list that I was handed of a number of towns where these checks appeared, and I took it for granted that those comprised all of the towns where there were check marks of the kind that I was comparing.

Q This question was asked you with reference to what work, Mr Knefler? A Where I had drawn off the names that had been checked as having similar ratings, where I found that there was a different classification of business as it appeared in Complainants' Exhibit 9 and Defendants' Exhibit 140.

on of
am L.
r.

Q Different classification appearing in these two
1546 books, Exhibit 9 and Exhibit 140, as appearing in what other book? A As compared with the September, 1901, edition of R. G. Dun & Co.'s reference book.

Q Now have you made any further examination as to names checked on the left in Exhibit 9, and compared the classifications in that book with the classification given the same name in Dun's September, 1901, book? A Yes, I have.

Q Did you find any additional names which are not included in the list which you testified to the other day, where the classification was different; where the classification given the same name in the Dun book was different from the classification given in the Exhibit 9?

Mr Hoyne: Objected to as immaterial.

A Yes, sir, on just a hurried examination I found a few.

Q Then there are names checked in the Exhibit 9 aside from those contained in the list which you made, given a different classification in Dun's book? A Yes, sir.

Q Mr. Knefler, have you completed an examination and comparison of the capital ratings given names checked on the left hand side of Complainants' Exhibit 9 at headquarters, which were checked as similar reference ratings, I mean names in which the reference was to another town?

Mr Hoyne: I object to that as immaterial.

1547 A Yes, sir.

Q Have you that list with you? A I have.

Q With what did you make the comparison of capital ratings at the headquarters of these different names? A Exhibit 9 I made the comparison with R. G. Dun & Company's R. B., edition September 1901.

Q Was this list made by you or under your direction? A Yes, sir.

Mr. Pease: I offer in evidence the list of names and ratings referred to by the witness as Defendants' Exhibit 148.

Mr. Hoyne: That is objected to as immaterial and incompetent.

Mr. Pease: Q Did you complete the same work as to Complainants' Exhibit 8? A I did.

Q And did you do it in the same way? A Yes, sir.

Q And is this a list of those names and ratings? A It is.

Q Was it made by or under your direction? A It was.

Q As to what part of Exhibit 8 did you make this comparison of ratings? A Such States as were checked in Complainants' Exhibit 8.

Q How checked? A As having—

Q Well, where were they checked, I mean? On the left?

A On the left hand side of the page.

1548 Q Did you make this comparison of ratings at headquarters as to all of the names checked as reference ratings in that book? A Similar references, yes, sir. As a matter of fact, the checks were not against the names at headquarters, they were against the reference rating.

Q I understand, but you made the comparison of the capital rating as given at their headquarters, did you not? A Yes, sir.

Q Now in this work, did you include in the similar reference ratings the names checked in Exhibits 8 and 9 at which reference was made to purchasing departments? A Yes, sir, I treated them as the reference rating simply.

Q Well, they were checked as a similar reference rating were they not? A Yes, sir.

Q About how many names are there in this list of 126 pages? A Approximately between 1800 and 2000.

Q About how many to a page? A About fifteen to a page.

Q Did you estimate the number of names in the— A Yes, sir, I estimated it.

Q How many did you make in this Exhibit 149? A I should judge in the neighborhood of a thousand.

Q How many pages are there here? A About 70.

Mr. Pease: I offer in evidence Exhibit heretofore marked 149, with the pages added as testified to by the witness,

1549 making in all 68 pages.

Mr. Hoyne: That is objected to as incompetent and irrelevant.

Cross-Examination by Mr. Hoyne.

Mr. Knefler, you said this work was done at the headquarters. What do you mean by headquarters? A Well, that is the point at which these names are rated—or rather—yes, where they are rated. The other points are called branches in both books.

Q Didn't you use the word "headquarters" in reference to both these lists, in reference to both of these Exhibits that you have been offering today? A Yes, I made the reference here, turned to the headquartrs in both books.

on of
am L.
r.

Q In this Exhibit 148 where are the headquarters of—take any of those names, what do you mean by "headquarters"? A Well, taking the first name as an example, L. W. Blinn Lumber Co., listed at Tempe, Arizona, in the Lumbermen's Credit Association reference book of January, 1902, reference is made to Los Angeles, California, as headquarters. In the September, 1901, book of R. G. Dun & Co. a reference is made to San Francisco as headquarters.

Q Now which do you call the headquarters in that name you have spoken of? A The headquarters would be
1550 the point at which they are rated.

Q Well, which point is it in that particular name, San Francisco or Los Angeles, if you know? A No, I don't know. The headquarters are given at different points in the respective books.

Q Does not this memorandum here, "See San Francisco", indicate that that is headquarters? A Yes, sir, that is my understanding, in the R. G. Dun & Co. book.

Q These two lists were prepared under your direction, you say? A Yes, sir.

Q I notice they are typewritten. Have you examined them since they were typewritten? A Yes, sir.

Q Examined each name? A Yes, sir.

Q So that you are certain they are correct and accurate? A Yes, sir.

Mr. Pease: There is one statement here that I want to correct or change on page 945, where Mr. O'Connor asked me if there was any particular matter in some of the Exhibits which were offered the other day that I wanted or expected to call the court's attention to, and I said no. Now there may be some matter in those Exhibits that I will want to call the court's attention to. I did not want any misunderstanding.

Mr. Hoyne: Now what Exhibits are those?

1551 Mr. Pease: 143, 144 and 145. The two first are supplements and the other was a publication, I don't remember the name of it.

Mr. Hoyne: Of course we shall object to their admission as evidence.

Adjourned until Friday, Jan. 30, 1903, at 2:30 P. M.

1552 January 30, 1903. 2:30 o'clock P. M.
Met pursuant to adjournment.
Present, as before.

FRANK B. PEASE called as a witness on behalf of defendants, being first duly sworn, testified as follows: Deposition Frank

My name is Frank B. Pease, I am one of the solicitors for the defendants in this matter. The papers offered in evidence as Defendants' Exhibits 72 to 139 inclusive, in connection with Mr. Stadden's testimony, were handed to me either by Mr. Clancy, Mr. Stadden or Mr. Knefler.

We offer in evidence the reports produced by the Lumbermen's Credit Association before Master in Chancery Bishop on the hearing for a preliminary injunction, upon notice of the complainants and numbered for identification 1 to 9 inclusive; 60 to 67 inclusive; 70, 71, 72,; 75 to 89 inclusive; 102 to 108 inclusive; 119 to 123 inclusive; 132 to 168 inclusive; 174, 185; 198 to 201 inclusive; 209 to 223 inclusive; 236 to 252 inclusive; 265 to 273 inclusive; 296 to 302 inclusive 319 to 329 inclusive; 331 to 334 inclusive, as Defendants Exhibits 150 to 302 inclusive.

Mr. O'Connor: We object to them as immaterial, irrelevent and incompetent.

Mr. Pease: Mr. O'Connor, we produce here the red
1553 bound books of the January, 1902, edition which were also produced before the Master by the Lumbermen's Credit Association at the same time as the reports and under the same circumstances. After further consideration we have decided not to introduce these red bound books in evidence; that is to say, that we do not consider them material to the case and therefore we decided not to introduce them, the January, 1902 book having been offered in evidence. These may be marked "for identification", A to T inclusive, of this date.

Mr. O'Connor: I wasn't present at the last hearing, Mr. Hoyne tells me that at the last hearing you retracted a statement,—

Mr. Pease: Corrected.

Mr. O'Connor: Which you made at the former hearing, that certain statements which I understood you to offer merely as samples of the forms used by the Lumbermen's Credit Association you might want to refer to for other purposes.

of Pease. **Now I think that when you offer papers in evidence containing an almost endless list of names and a large amount of data,** you ought to state for what particular purpose you offer the papers so that our attention may be called to the particular portion of the paper that you intend to use.

Mr. Pease: I simply don't want to preclude ourselves of the right to make any legitimate and proper use of the evidence as a whole, or any part of it; goes in for whatever it is—

1554 Mr. O'Connor: But if you intend to use the papers for any other purpose than as you stated, mere samples of the forms,—that is, if you intend to refer, on the argument of the case, to any of the contents of the papers, you ought to call our attention to it.

Mr. Pease: Of course I can't tell what may arise in the conduct of this case before we get through, and I don't want to be precluded from making any proper use of any evidence that we have put in, that is all.

Mr. O'Connor: Well, we shall object to the use of the papers for any other purpose than as mere samples of the forms used, as you stated, unless you call our attention to any part of the contents to which you intend to refer upon the hearing of the case.

Mr. Pease: I believe you objected to the introduction of all the documents at the time they were offered.

Mr. O'Connor: Yes, we objected to them as not proper even for the purpose for which they were stated. We now object to your using on the hearing, or referring on the hearing to the contents of the papers unless you call our attention to the particular part of the contents which you intend to use as evidence.

Mr. Pease: I did not understand or intend to limit the use of them or the purpose for which they were introduced in any particular manner.

Mr. O'Connor: I distinctly asked you if you were 1555 offering them for any other purpose than as samples of the forms, and you said no.

Mr. Pease: Well, it didn't occur to me at that time that there might something arise. I simply don't want to be precluded in the use of them, and tied down; I think the evidence that is offered, as I understand it, is offered for any and all purposes proper in connection with the case.

Mr. O'Connor: Well, we will leave that question to the

Court. I will ask defendants' counsel to deposit with the Clerk all the evidence that you have introduced so that we may refer to it.

Mr. Pease: You mean the exhibit evidence?

Mr. O'Connor: Yes, your exhibits. I don't know just to what particular parts we may want to refer, but you can of course understand that we ought to have access to them so as to make up our rebuttal case, if we care to put in any evidence in rebuttal.

Mr. Pease: You understand that our reports are in the nature of confidential matter, and couldn't you arrange with us to make use of it at our office? In other words, we wouldn't want these documents, these reports, especially, left with the Clerk or with any one where they will be accessible to any one not entitled to see them. We will arrange so that you can have them at any time, Mr. O'Connor, I would rather not leave them here.

Mr. O'Connor: All right, we will leave it that way.

Mr. Pease: Defendants close their proof.

1556 COMPLAINANTS' EVIDENCE IN REBUTTAL.

March 9, 1903.
10 o'clock A. M.

Met pursuant to notice.

Present:

Mr. Hoyne, of Hoyne, O'Connor & Hoyne, representing complainants;

Messrs. Atwood & Pease, representing the defendants.

THEODORE E. STEIN, called in rebuttal on behalf of complainants, being first duly sworn, testified as follows:

Direct Examination by Mr. Hoyne.

Q Have you, since your former examination, made any further comparison between the March, 1901 edition of R. G. Dun & Company's reference book and the July, 1901 edition of the Lumbermen's Credit Association's reference book?

A Yes, sir.

Q What states have you compared and what was the result of your comparison?

Mr. Pease: The last part we object to, as calling for a conclusion.

A I have compared all of the states in the Septem-
1557 ber, 1901 Lumbermen's Credit Association book that were not finished by Mr. Gallagher and Mr. Kramer. I think their figures have been given before.

Mr. Pease: We object then as to these states, for the further reason that it is not rebuttal testimony.

A I counted the number of names in the Lumbermen's Credit Association's book, also the number of these that did not appear in R. G. Dun & Company's book,—that is, the Lumbermen's Credit Association's July book and Dun's March book, 1901. I also counted the number of similar reference ratings in both books, the number of similar blank ratings in both books and computed the total number of similar ratings according to the schedule which is on file.

Q According to what? A The schedule on file. There was a schedule that we worked by, an exhibit here. Then from this I deducted the number of names whose ratings were not exactly similar but which we called so according to the schedule, and from these results computed the number of names which had exactly similar ratings.

Mr. Pease: I move to strike out the answer as not rebuttal testimony.

Q Will you give the states in order with the computation you have made for each state?

Mr. Pease: We object to the question for the reason that it is not rebuttal testimony, but part of complainants'
1558 direct case.

A The following table shows it:

State.	Names in L. C. A. July '01 edition.	Not in Dun Meh. '01 edition.	In both books.	Ref. ratings similar.	Blank ratings similar.	Total similar according to schedule.	Not exactly similar.	Exactly similar, including blank and reference ratings.
Miss	819	393	426	18	57	158	25	133
Mo	1559	421	1138	149	44	606	200	406
Mont	153	69	84	5	5	35	10	25
Neb	812	182	630	212	17	399	88	311
Nev	19	7	12	1	1	6	4	2
N. H	908	453	455	11	47	198	50	148
N. C.....	1165	480	685	26	66	247	52	195
N. D	370	94	276	101	14	149	11	138
Ohio	3045	967	2078	47	96	786	376	410
O. Ter ...	297	123	174	65	4	88	8	80
Ore	576	245	331	14	57	130	14	116
Pa	3668	918	2750	103	210	1192	389	803
R. I	138	34	104	1	9	41	11	30
S. C	467	174	293	9	46	110	18	92
S. D	373	95	278	102	10	161	21	140
Tenn	1322	641	681	36	61	241	52	189
Tex	1266	422	844	152	62	393	75	318
Utah	188	60	128	3	4	46	21	25
Vt	829	364	465	8	30	159	29	130
Va	989	424	565	18	34	192	64	128
Wash ...	905	405	500	35	88	183	15	168
W. Va ..	776	391	385	23	28	151	43	108
Wis	1806	439	1367	138	80	580	228	252
Wyo	51	18	33	2	1	14	4	10
Man	269	48	221	13	30	95	15	80
N. J	809	208	601	15	51	214	79	135
N. M	71	23	48	5	8	24	3	21
N. Y	4652	1414	3238	99	367	1332	409	923
Ill.....	2599	494	2105	128	131	974	404	570
Mich	2925	753	2172	100	189	858	279	579
Minn	1453	435	1018	243	55	510	105	305

1559 Mr. Pease: I move to strike out the answer as not rebuttal testimony, the same being part of complainants' testimony in chief.

Q What do you mean by "total similar according to schedule"? What schedule do you refer to? A The schedule that has been filed as an exhibit here, by which we completed the first part of the work, by which we compared the ratings.

Q Is that the key? A It is the copy of the two keys showing similar ratings that we called similar although some of them were not exactly similar.

Q The figures you give as exactly similar, do you mean that the ratings in the two books is precisely the same? A The capital rating, yes, sir. That is, it represents the same amount of capital. They are not the same as far as the letters are concerned.

Q That is the letters in the respective keys indicate exactly the same amount of capital rating? A Yes, sir.

Mr. Pease: We move to strike out all the testimony of the witness, for the reason that it is not rebuttal testimont; and without waiving our motion or objection on that ground, we proceed to cross examine the witness.

1560 *Cross-Examination by Mr. Pease.*

Q State whether or not the number of exactly similar ratings includes blank ratings and reference ratings? A The schedule shows that I think, yes, sir; that is, these figures show it.

Q In making this comparison what if any attention did you give or pay to the classification of business? A The same that we had done before.

Q Well, what was that? A That is, they were either in the lumber business or hardware business, or some allied business. Saw mills, and like that.

Q The business classification was not in each instance in which you counted the ratings as similar, exactly the same, that is, it wasn't expressed the same? A Very likely not.

Q Well, isn't that the fact, don't you know that? A In some cases I know that it was not.

Q Isn't the classification in the Lumbermen's Credit Association's reference book more complete and detailed than the classification given in Dun's book?

Mr. Hoyne: I object to that as calling for a conclusion of the witness.

Q In these ratings where you have counted the ratings as similar?

1561 Mr. Hoyne: I object to that.

A I couldn't say, I didn't make any comparison with that object in view.

Q Was the pay ratings taken into account? A You mean the credit rating?

Q No, I mean the pay rating in the Lumbermen's Credit book? A No, simply the capital rating.

Q Simply the capital rating? A Yes, sir.

Q Who if any one assisted you in this work? A No one.

Q In what way if at all did you indicate or mark the names in the Lumbermen's Credit book which you included in this comparison as having a similar reference or capital rating?

A Similar reference or capital rating? Similar reference ratings are marked with a little circle in front of each name, and the similar capital ratings are marked with an "X" in front of each name, with the exception that in those cases where the ratings were not exactly similar I placed a line before the "X", two little marks through it.

Q In what book did you make these identification marks? A In the Jumbermen's Credit Association July, 1901 book.

Q The one previously offered in evidence by the complainant as Complainants' Exhibit 8? A Yes, sir, part of them, with the exception of three states.

1562 Q What states were those? A New Jersey, New Mexico and New York.

Q In what book did you make the identification marks as to the names in those states? A In a copy furnished by you.

Q What if any other identification marks did you make in either of these books as to the names included in your computation? A The blank ratings which were the same in both books, that is, where there was no rating in either book marked with a blue cross, blue pencil before the name, those which did not appear in Dun's book were marked with a cross behind the name.

Q In the similar reference ratings included in this computation, what if any attention did you give the rating at headquarters, or what if any examination did you make as to the rating given at headquarters? A I compared them in the same way that I compared the others.

Q Well you did that merely in your calculation and computation as to the capital rating, did you not? A Yes, sir.

Q You included in your computation of similar reference ratings all names where the reference was made to some other city or town without regard to whether the capital rating given at that other city or town was similar? A Yes, sir.

1563 Q Just what instances did you include in your similar reference ratings, or just what names did you include in your similar reference ratings? That is, how was it expressed in the Lumbermen's Credit book? A In cases where they referred to headquarters or purchasing department or simply said "see" such and such a place and were the same as in Dun's book.

Q Did you find those same expressions in Dun's book? That is, does Dun use the expression "see" for example, Chicago, Illinois? A Yes, sir.

Q Does Dun's book make any reference to purchasing departments? A I don't believe I found any expressed in that way in the book; they use the word "see" to express all of that, purchasing department or headquarters or —

Q In what manner are the reference ratings which you included in this computation expressed in the Dun book? A Usually I think by the expresssion "see" such and such another town.

Q Were there any instances of names in which there was a different expression which you counted as similar reference ratings in the Dun book? A There may have been the term, headquarters, at such and such a place; in that case I would have called it the same.

Q You included them in your computation, those names? A Yes, it means the same thing as I understand it.

Q Although it is expressed differently? A Yes, sir.

1564 The expression see the other town would indicate that that is where the headquarters are, and that is where they are rated.

Q That is, that is your understanding, or the construction which you personally place upon the different expressions in the Dun book? A Yes, sir.

Q That difference in the reference ratings or the different manner in which the references are made to other towns or expressed, was not included in this schedule, was it? A No, in that case I called them similar.

Q Did you in each instance where a reference was made in Dun's book to another town, look up that town to see whether or not the party named was rated at that place? A No, not at that time.

Q Did you at any time? A In the course of the work I must have compared that name.

Q That isn't the question. The question is, did you in each instance where reference was made to another town, look up that name in that other town to see whether it was rated or not, or whether it appeared in the book or not? A I took that for granted.

Q Then you did not? A No, sir.

Q Then there may be a great many instances in which reference is made to some other city or town, and the party at that other city or town is not rated at all, or does not appear in that town for all you know? A In both books?

1565 Q No, in the Dun book?

Mr. Hoyne: I object to that; that would seem to follow necessarily from his other answer.

Mr. Pease: Well we want him to make his own deductions.

A I don't think so.

Q You don't think so? A No, sir.

Q You don't know anything about it— A No.

Q From an examination of the book for that purpose, do you? A No. I don't think so.

Q Now, in cases where the classification given in Dun's book in which you have counted the rating as similar or exact, if the classification was given in the Dun book as a general store, and in the Lumbermen's credit book as "lumber" did you include those cases in your computations of a similar or exact rating? A Usually the name was given in the Lumbermen's book as general store or lumber in a case like that, but I think if such a case had come up that I should have called them similar. That is, taking it for granted that it was the same party.

Q Now, as a matter of fact, Mr. Stein, is not the classification, in a large majority of the names which you have included in your computation as having a similar or exact rating, expressed differently in the two books? A You mean the classification of business?

Q Yes, the classification? A I couldn't say posi-
1566 tively as to that because I made no special comparison between the businesses.

Q Well, are there not a large number of those cases where the ratings are expressed differently? A The ratings?

Q I mean the classification? A The classification of business?

Q Yes. A There are some, but I couldn't say how many.

Q Well, aren't there a good many.

Mr. Hoyne: I object to that; if he don't know he can't say.

A I say I didn't look that up specially, for that purpose, just took a general view of that.

Q You did find such cases? A Yes, sir, some cases.

Q Then you did not in each instance in which you have counted the rating as similar or exact, confine that computation to the same classification expressed in exactly the same language? A Not exactly, no, sir.

Q Don't you know, Mr. Stein, as a matter of fact, that in at least nine tenths of the cases of the names which you have included in your computation as having a similar or exactly

the same rating, there was a difference in the business classification? A No, sir, I don't know it.

Q Some difference? You don't know it? A No, sir.

Q Don't you know that that is true as to a majority of the names? A No, sir.

1567 Q Well, why don't you know? A It might be and it might not. I didn't go through the book with that object in view, classifying the different business, and therefore I paid no especial attention to it further than to call them similar in the way I have said before.

Q And this was true as to the comparisons which you made and testified to on your previous examinations, was it not?

Mr. Hoyne: That is objected to as not cross examination.

A I think so, yes.

Q In the names included in your computation as having a blank rating, did you pay any attention or take into account the pay ratings given in the Lumbermen's Credit book? A No, sir.

Q In this computation did you include in your blank ratings the names in the Lumbermen's Credit book given the rating blank 1, blank 2, blank 3, blank 4, blank 7, 89 and 33? A If there was no capital rating I called it a blank rating.

Q Even though these other ratings were given? A I don't think they have anything to do with the capital, didn't consider them so.

Q Didn't treat them so? A Didn't treat them as part of the capital rating at all.

Q Don't R. G. Dun have a blank capital with a credit
1568 rating? A They use a credit rating without stating any capital.

Q Without the capital rating? A Yes.

Q Did you include those cases in your computation of the similar blank ratings? A Included all cases where there was no capital rating given.

Q And did you in cases where there was no capital rating given in the Dun book but a credit rating was given? A Yes, sir.

Q Then if a party was given a blank capital with a low credit rating in the Dun book, and the same party was given a blank capital with prompt pay rating in the Lumbermen's Credit book, you included such names, if any, in your computation of the blank ratings? A Yes, I paid no attention to the credit ratings.

Q Credit or pay ratings? A Credit or pay ratings.

Q Or any other rating? The Lumbermen's credit gives a large lumber of other ratings? A I simply compared them with reference to the capital ratings.

Q Only? A Only, that is capital, reference or blank.

Q What letters in this comparison did you treat or include in your computation of the exactly similar ratings? A In which key do you want me to give those?

Q Give both keys. A As having exactly the same ratings?

1569 Q Yes. A The letter "A" in the Lumbermen's Credit book which is equivalent to "D" plus, in the Dun book.

Q You mean exactly the same now, I am asking you? A Yes, sir.

Q Well, express it that way. A It expresses exactly the same amount of capital.

Q All right; what other? A The letters "AB" in the Lumbermen's book which is the same as the "D" in the Dun book.

Q Exactly the same? A Yes, sir. The letter "D" in the Lumbermen's book which is the same as the "G" in the Dun book; the letter "E" in the Lumbermen's book which is the same as the "H" in the Dun book; the "F" in the Lumbermen's book which is the same as the "J" in the Dun book. The letters "EF" in the Lumbermen's book which are the same as the letter "K" in the Dun book.

Q Now in this computation did you include the names of persons, firms or corporations in which there was a difference in the style of the name, in the initial or spelling? A I don't think so, unless the difference was a very slight one and there was no doubt in my mind that it meant the same party.

Q Then did you include in this computation names of parties firms and corporations where the style of the name was different and the initials or spelling was different, if you

1570 were satisfied in your own mind that they referred to the same party or concern, is that right? A I may have done so, but in very few cases.

Q Well, aren't you pretty clear that you did do so in some cases? A Well, supposing a name was spelled Frank G. Ward in one book, and in the other Frank G. Word, in that case I should have called the names similar. And it may have been that in some cases I did that, I think I did.

of E.

Q Supposing a name appeared in one book as Thomas Jones Company and in the other book, as Thomas Jones & Company, would you count those the same? A No, sir.

Q Supposing it was a firm given the name of Jones & Company in one book and there was another name Jones & Son in the other book, did you count those the same? A No, sir.

Q Just what class of differences in style or spelling or initials did you include in this computation of similar or exact ratings?

Mr. Hoyne: I object to that because the witness has already substantially said that he don't remember that there were any differences; that he may have if he was satisfied that they were the same persons.

Mr. Pease: I want to know what satisfied him, that is exactly the point. I want to know in what class of differences his mind was satisfied.

1571 A I have just given an illustration.

Q What other instances? A I can't remember any particular cases.

Q Well, class of cases? A I don't understand what you mean by class of cases.

Q You have mentioned one class of cases where there was a slight difference in the spelling of a name; now was there any other class of cases, like the style of the firm or the initials of the name or "incorporated" and "company" and "and company",—were there any of these different classes of names appearing in the books which you included in your computation of similar ratings? A I don't think so, although as a rule the Lumbermen's Credit Association's book doesn't state whether the concern is incorporated or not, that is my belief.

Q Then as I understand you, you did not include in your computation of similar ratings any rating where there was a difference in the style of the name, is that right? A I don't think so.

Q You don't think what? A I don't think that I called any names similar.

Q You mean any ratings similar? A Ratings similar, in which the names were of a different style.

Q What if any other marks or memoranda did you make in that part of this book Exhibit 8, from which you made

1572 this computation? A In some cases where the styles were not exactly similar I marked the name as not being

in R. G. Dun & Company's book, and put the style which was something like it after this mark in the Lumbermen's book. There was no especial object in that except—

Q As it appeared where? A In Dun's book.

Q Did you do that in any other instances except where there was a check mark placed after the name indicating that it was not in the Dun book? A Not to my knowledge.

Q Is that true with reference to the work which you did in Exhibit 9 and the work which you did in Exhibit 9 and which you testified to upon your previous examination in chief?

Mr. Hoyne: That is objected to as not cross examination.

A I don't remember as to that.

Q I call your attention to the memoranda appearing at the top of page 1, the first page of the state of Mississipi in this book Exhibit 8, and ask you who made that memorandum? A I made that memorandum.

Q What does it indicate? A It simply indicates the marks that I used in designating these different similarities of ratings.

Q In other words, it is the key or schedule by which you made this computation to which you have testified to-day, 1573 is that right? A If you call that a schedule, yes, it is the same thing that I have stated there as to the way in which I compared them.

Q Have you checked or marked with appropriate check marks according to this key all of the names included in your computations? A To the best of my knowledge I have.

Q Did you, in the work which you did and the computations which you made of a similar character in Exhibit 9, and to which you have previously testified?

Mr. Hoyne: That is objected to; the witness already has been examined on his previous testimony.

A No, sir, not according to that key.

Q Well, according then to the key which you did that work by, which I understand is the same as this key with the exception of the names included in this computation as not exactly similar,—that is the only difference, is it not? A No, I think there was a difference in marking the reference ratings.

Q What was that difference? A In this book, Exhibit 9, I find the reference ratings marked with a blue "X" in that book they are marked with a little circle.

Q With that exception the names compared in Exhibit 9

en of
re E.

are checked in the same manner are they not? A No, I
1574 find no special check mark for similar blank ratings in this book at all.

Q Did you, in the work which you did upon Exhibit 8, change of the spelling or the initials of any of the names appearing in that book? A I may have done so, yes, sir.

Q Did you include such names in your computation of similar ratings? A I think I have already answered that.

Q No, sir. A As far as the difference in spelling is concerned, if the spelling was the same with the exception of a letter or so, I called them similar.

Q You sometimes corrected the spelling in the Lumbermen's Credit Book to agree with the spelling in the Dun book, did you? A In the cases where I called them similar. That is, I have explained that before. To use the same illustration I used before, supposing a man's name was Frank G. Ward—

Q What would you do in that instance,—similar instances? A Supposing the name was Frank G. Ward in the Lumbermen's book and Word in the Dun book, I would call the name similar and simply, for the sake of accuracy just make an "o" in pencil over the "a" to show the difference.

Q In the Lumbermen's Credit book? A Yes.

Q Did you know which was the correct spelling? A No, sir.

Q Did you in— A It wasn't with a view to correction at all, it was simply as a notation.

Q Did you in any instance change any initials in the
1575 Lumbermen's Credit book? A I may have done so, but I don't think I called them similar.

Q Didn't call them similar? A Don't think so.

Q Did you in any instance change the style of the name of the concern? A I might have done so, but I don't think I called them similar.

Q Let me call your attention to "J. D. Shumate" at Daleville, Lauderdale County, Mississippi, on page 6 of that state, in which the "D" is either stricken out or changed to some other letter, and ask you if you made that change? A I think so, yes, sir.

Q What is the change? A Seems to be the letter "L" I think it is, over the "D" in pencil.

Q And that indicates that the name was given as "J. L. Shumate" does it not, in the Dun book? A I should think so, yes.

Q Let me call your attention to the White-Martin Lumber Company on the same page, in which the "Lbr" is stricken out, and ask you if that was stricken out by you? A I think so, yes, sir.

Q Let me call your attention to the horizontal mark opposite "Phillips, R. S. Lbr. Co." under Ellisville, Jones County, Mississippi, on page 7 of that state, and ask you what that mark indicates? A Simply used in counting the hun-
1576 dreds, counting the names in the book.

Q I then call your attention to "Davis, L. R. & Bro." under Dennis, Tishomingo County, in Mississippi, on the sixth page and in which "Bro." appears to be stricken out, and ask you if that was stricken out by you? A Yes, sir. The name is marked as not being in the Dun book.

Q In this computation did you include the ratings given any names appearing under a city or town in the Lumbermen's Credit Book different from the city or town in which the same name appeared in the Dun book? A I don't see how I could have done that.

Q Well, the question is, did you? A Maybe I don't understand the question.

Q I mean this: Supposing the name appeared in the Lumbermen's Credit book under one town or as being at one city or town, and the same name appeared in the Dun book under or as being at another or different city or town, did you include the rating given such names in your computation? A I don't think so. I couldn't have looked them up except under the town they are given under in the book.

Q You have included in your computations the state of New York? A Yes, sir.

Q But I don't find any check marks of any kind or character either before or after the names in that state ap-
1577 pearing in this book, why is that? A I told you before that part of this work, as far as three states were concerned, New York, New Mexico and New Jersey, were computed from the book furnished by you. This book is imperfect, this part of the page is missing (Referring to Exhibit 8).

Q Let me call your attention to "Darr, P. B., saw mill," rated "D2", under Alligator, Bolivar County, Mississippi, in which the "B" has been stricken out and "& Bro." added in pencil, and "Basic City, Lauderville Co." in which the word "City" has been stricken out in pencil and "Mosher, E. J."

n of re E.

appearing under Basic City to which has been added "& Co." on the first page of Mississippi, and ask you if those changes were made by you? A They were, yes, but they are marked as not being in Dun's book. It is simply a notation I made for my own benefit.

Q In what manner did you keep record of your count of these names? A In counting the names?

Q Yes. A In the book?

Q Yes. A At the end of each hundred names I usually made a little check mark on the side in front of the name, and at the end of the state I counted up the number of hundreds and added the names over. I just counted them, that is 1578 all. Checked each hundred with a check mark before the hundredth name.

Q Did you keep any other record? A Not until after I had them counted.

Q I see at the end of Mississippi in this book Exhibit 8, the figures 819 and 393, not, what does that indicate? A That according to my count there are 819 names in the book, of which 393 do not appear in Dun's book.

Q Did you find the names of any cities or towns in this book Exhibit 8, which did not appear in the Dun book? A I think there are some, yes, sir.

Q Did you make any record of them? A No, sir.

Q Why not? A I wasn't comparing the books with that object in view.

Q Were the names of several cities and towns given in this book that did not appear in the Dun book?

Mr. Hoyne: I object to that as immaterial.

A There might have been, I couldn't say.

Q Have you any idea how many? A No, sir.

Q Let me call your attention to the name of F. C. Miller, appearing under Columbia, Boone County, Missouri, on page 10 of that state, in which the initial "C" appears to have been changed in pencil to "P", and ask you if you made that change? A Yes, sir, I think I did.

Q What does that indicate? A That the name in the Dun book was F. P. Miller.

Q And you changed the letter "C" to "P" for that 1579 reason, did you? A Yes.

Q And that name, or the rating given that name is included in your computation of similar ratings, is it not? A Yes, sir.

Q Now are there not a number of such instances in your computations? A Not to my knowledge. I should have called this a mistake, this "X" should have been behind instead of before the name.

Q Is that the only instance in which you have counted a similar rating where there was a difference in the initials given in the two books? A I couldn't say.

Q Why can't you say? A Because I am not sure; I didn't know that was in there.

Q Are there not instances which you have included in your computations in which there was a difference in the style of the name of the firm or corporation? A There may be.

Q Let me call your attention to the name "Raiser, F. W." appearing under Elmgrove, Holt County, Missouri, on page 13 of that state, in which the initial "W" is stricken out and before which appears a check mark in blue pencil, and ask you if that initial "W" was stricken out by you? A Yes, sir.

Q And the name was included in the computation which you have made was it not? A Yes, sir.

1580 Q How many such instances are there in the computations which you made? A In that case I should have called them the same.

Q No, but it isn't the question, Mr. Stein, of what you should have done. A I say I called them the same if the name is correct.

Q I know, in how many instances did you call the name the same where there was in fact a difference in the initial? A There was no difference in the initial in that case.

Q How did that name appear in the Dun book? A Very likely as F. Raiser.

Q Then there was a difference in the initial of that name as appearing in the two books, was there not? A I don't know how you would put them, in one case there are two initials and in the other case there is only one initial given.

Q Did you find, in making this comparison, any names in the Dun book in the lumber business or associated lines which did not appear in this book? A I didn't look for them.

Q You did your work from the Lumbermen's Credit book? A Yes, sir.

Q And made a comparison of such names only as appeared in that book, is that right? A Yes, sir.

Q Do you know whether or not as a matter of fact there are names appearing in the Dun book of parties engaged in

t of
e E.

the lumber trade or kindred lines, kindred trades, which
1581 did not appear in this book, Exhibit 8? A I don't know
that, no.

Q You don't know, Mr. Stein, that that is a fact? A No, sir, I haven't looked it up. I haven't looked up a name with the object of finding out whether it was in the Lumbermen's book or not, taking it from Dun's.

Q Let me call your attention to "Shaffner Brothers" appearing under the name of Utica, Livingston County, Missouri, on page 19 of that state, in which there appears to have been a change made in pencil in the spelling of the name, and ask you who made that change? A I made that.

Q What is the change? A The "N" is changed to "T".

Q Making that what? A Shaffter?

Q What does that indicate? A That the name appeared as Shaffter Brothers in Dun's book.

Q Do you know why you corrected? A No, sir; that wasn't put in with a view to making it correct, simply to note that there was a change.

Q You included that name in your computation, did you not? A I think so, yes, sir.

Q You made a large number of changes in the spelling and the initials and style of firms, the ratings of whom were included in your computations, did you not? A I don't think so.

Q I will call your attention to the name "Hasker,
Hdwe. Co." under the name Bridger, Carbon County,
1582 Montana, in which there appears a change in pencil in
the spelling of the name Hasker, and ask you if that change was made by you? A Yes, sir.

Q What is the change? A Change is made to "Haskin."

Q What does that indicate? A That there was that difference in the spelling in the two books.

Q And then you corrected it to agree with the spelling in the Dun book, did you? A Not corrected it.

Q Well, you made this change? A Made the change, yes.

Q To agree with the spelling of the Dun book? A Yes, sir.

Q Do you know which is correct? A No, sir.

Q You made similar changes in all this work did you not, Mr. Stein?

Mr. Hoyne: I object to that question, it is rather indefinite.

A I have said that so many times, seems to be getting superfluous. Depos The Stei

Q What may seem superfluous to you may not be superfluous. A I have stated that in cases where the spelling was the same all but one or two letters, or something like that where I was positive it meant the same party, I called them the same. In that case I simply checked the letters in the manner that they are noted there.

Q How could you be positive that it referred to the same parties? A I could not be positive.

1583 Q You just took it for granted, did you? A If I write my name T. E. Stein—

Q No, just answer my question. You took it for granted, did you? A Why, I used my own judgment.

Q Let me call your attention to the name "Walrath & Sherwood Lbr. Co." appearing in this book, Exhibit 8, under Monroe, Platt County, Nebraska, in which the character and, is stricken out in pencil. I will ask you if you struck that out? A Yes, sir, and a hyphen put in the place of the and.

Q And what does that indicate? A That the style in the Dun book was "Walrath-Sherwood Lumber Company."

Q And that that was included in your computations, is that it? A Yes, sir.

Q Did you in every instance in which there was any difference in the two books in the style of the firm and the initials or in the spelling, indicate that difference by making a change in this book as to the name, the ratings of which you included in your computations? A I think I did, yes, sir.

Q Are you positive as to that? A Quite positive.

Q What do you mean by quite positive? A Can't be sure of anything.

Q Then there may have been instances in which you did not make the change? A There may have been through a mistake, yes, sir.

1584 Q Where there was a difference in the classification did you make the change in this book? A Business classification?

Q Business classification. A No, sir.

Q Why not? A I wasn't comparing them with that idea in view.

Q Let me call your attention to the name of "Darne Bros" under Newmarket, Rockingham County, New Hampshire, on page 14 of that state, in which there appears to have been a

of E. change made in the spelling of the name in pencil, and ask you if that change was made by you? A Yes, sir, I think it was.

Q What is the change? A The "rn" was changed to "m" and spelled "Dame."

Q What does that indicate? A That the name was carried in Dun & Company's book as Dame.

Q And that name was included in your computation, that is, the ratings given that name were included in your computation, were they not? A Yes, sir.

Q Who gave you your instructions as to this work? A Mr. O'Connor.

Q Did you do the work exactly as you were instructed by Mr. O'Connor. A I think so.

Q Were those instructions in writing? A No, sir.

Q Did Mr. O'Connor tell you to include in your compu-
1585 tations the ratings given names where there was a difference in the spelling? A No, sir.

Q I call your attention to "Rumney Depot, Grafton Co., N. H." on page 18 of that state, in which the word "depot" is stricken out, and also the name "Walker Ellis" under the town "So. Danbury, Merrimac Co." on page 19 of New Hampshire, in which there appears to have been a change made in the name and I will ask you by whom these changes were made? A By myself.

Q What do they indicate? A That the name was carried in R. G. Dun & Company's book in the manner indicated.

Q That is, as Rumney? A As the town Rumney instead of Rumney Depot, and the name as, I think that is Wells, I am not positive. I wouldn't care to swear as to what I meant by that mark, Wells instead of Ellis.

Q You say you think you did the work according to Mr. O'Connor's instructions; what do you mean by that, Mr. Stein? A Those were his instructions, as I understood them.

Q What were his instructions? A To do what I have done there.

Q And Mr. O'Connor told you did he, to change the spelling of names and of towns and initials, and the style of the firm whenever the Lumbermen's book didn't agree with the Dun book? A He gave me no special instructions in regard to that at all. He told me to compare the names that were simi-
lar and ratings that were similar, and left that to my own
1586 judgment I called those similar.

Q Then you didn't follow Mr. O'Connor's instructions? A I think I did, yes, sir.

Q I call your attention to some letters in pencil on page 18 of New Hampshire, opposite the name "McLaughlin, K. M.," under Salem, and also opposite the name "J. M. Clark" under Scott, and ask you what those initials indicate, or rather who placed them there? A I did.

Q What do they indicate? A First indicates that the name does not appear in Dun & Company's book, the other indicates the name that does appear that is something like that.

Q What does "K. M. McL. & Co." opposite McLaughlin indicate? A That the firm of K. M. McLaughlin & Company appears in R. G. Dun & Company's book, whereas they only carry K. M. McLaughlin.

Q On page 19 of New Hampshire, all of the names appearing under Snyder's Mills and Summersworth have a check mark following the name. Do you mean by that, that those names did not appear, the names of those towns did not appear in Dun's book? A It doesn't indicate that there.

Q What does it indicate? A That those names didn't appear.

Q As a matter of fact, do those towns appear in Dun's book? A I couldn't say.

Q The same is true of Stewartstown on the same page; 1587 did the name of that town appear in Dun's book? A I don't know.

Q Why didn't you make a comparison of the towns? A Those weren't my instructions, as I understood them.

Q Were you instructed not to? A No.

Q You also did the work on Virginia, in Complainant's Exhibit 9, did you not? A Some time ago, yes, sir.

Q I call your attention to the name J. H. Crank, appearing under Fredericks Hall, on page 12 of Virginia, and ask you who make the change in the spelling of that name? A I did.

Q What is the change? A It was changed I think from Crank to Crauk.

Q What does that indicate? A Indicates that there was that difference in names in the two books.

Q And that name was included in the computation which you made of the ratings in Exhibit 9 was it not? A Yes, sir.

Q Now this name was not changed by you in Exhibit 8? A No, sir.

Q Why not? A Apparently in R. G. Dun & Company's March book it appeared as Crauk.

Q Did you keep a list of these corrections? A The corrections are in the book.

Q But did you keep another list; did you make a separate list with the corrections to turn into the office?

1588 A *No, sir.*

Q I will ask you to refer to R. G. Dun & Company's March 1901 book and state how that name appears in that book?

Mr. Hoyne: I object to that, the book shows for itself.

A (Referring to book). Crauk.

Q That is J. H.? A J. H. Crauk, general store and saw mill.

Mr. Hoyne: That is objected to.

Q. What is the rating there? A "G", that is equivalent to "D" in that book.

Q. What is the classification given that name in the Dun book?

Mr. Hoyne: Objected to for the same reason.

A. General store and saw mill.

Q. How does it appear in the Dun September 1901 book? A. As J. H. Crauk.

Mr. Hoyne: I object to that, the book shows for itself, and that is'nt proper cross examination; isn't the subject he has been testifying about.

Q. I want to call your attention to the name of "Bucher, W. M." after which is added in ink, "& Son", and the name "Leake", in which the "e" is stricken off, and "White Jr." in which the "Jr." is stricken off, on page 14 of Virginia, in Exhibit 9, and ask you by whom those changes were made?

A. I think I made them myself.

1589 Q. What do they indicate? A. That there was a difference in the names appearing in the two books compared.

Q. You included those names in your computations made on this book, did you not?

Mr. Hoyne: Objected to.

A. I think so.

Q. I call your attention to the cross in ink appearing after the name of the town "Hartwood, Stafford Co." on this same page, and ask you what that indicates? A. I woudn't be positive, but I think that indicates that that town doesn't appear in Dun & Company's book.

Q That check mark was made by you, was it not? A Yes, sir.

Q Did you indicate the names of towns not appearing in Dun's book in that manner in Exhibit 9? A I did in some cases, yes.

Q Let me call your attention to the name "Schooner Bros." appearing under Honaker, page 15, Virginia, in which there appears to have been a change in the spelling of the name, and ask you who made that change? A I did.

Q What is the change? A The second "o" is changed to an "f".

Q What does that indicate? A That the man appeared as "Schofner Brothers in Dun & Company's book.

Q That name was included in your computation, was it not? A Yes, sir, I think so.

1590 Q I call your attention to "Norris Bros" under Leesburg, on page 17 of Virginia, in which a change has been made to "Norris & Bros." and ask you by whom that change was made? A Myself.

Q What does it indicate? A That the name appeared in Dun & Company's book as Norris & Brothers.

Q That name was included in the computation which you made of this book, was it not? A Yes, sir.

Q I call your attention to "Hawkins, W. E. & Bro." under McGahesville, page 18 of Virginia, and which has been changed to "Hawkins, W. E., Bro. & Co." and ask you by whom that change was made? A By me.

Q What does that indicate? A That the style is as it was changed in Dun's book.

Q And that name was included in your computation in this book? A I think so, yes, sir.

Q There are a number of similar changes appearing in this book in ink, I will ask you if they were made by you? A I couldn't be positive but I think they were, all that appear there.

Q Did Mr. O'Connor tell you to separate from your similar ratings the exactly similar ratings? A Yes, sir.

Re-direct Examination by Mr. Hoyne.

Q You have been examined in regard to certain changes made upon Exhibit 8; how were those changes made, that

1591 is, in ink or lead pencil? A In lead pencil.

Q What was the purpose of those changes?

Mr. Pease: Objected to as immaterial.

A There was no purpose in that, simply to indicate to myself what names had been changed in that manner.

Mr. Pease: You mean which names were not the same, don't you?

Mr. Hoyne: Hold on, let me examine this witness.

Q What were Mr. O'Connor's instructions in regard to the comparison of names for similar ratings; that is, were you instructed to compare names of different parties?

Mr. Pease: I will have to object to that, you have asked him one question, let us have him answer it without leading him.

A I don't quite understand that question.

Q I will ask you another question if you don't understand that. What was the purpose of this examination that you have made?

Mr. Pease: I object to that as calling for a conclusion.

Q What was the scope of the examination?

Mr. Pease: I object to that as not re-direct.

A The examination was made for the purpose of comparing names and ratings in both books, as to the similarity of capital ratings.

Mr. Pease: I move to strike the answer out as not responsive to the question.

Q Did you in comparing names in the Lumbermen's 1592 book with names in the Dun book, treat as the same names of persons who were not the same persons?

Mr. Pease: Objcted to as leading, and further for the reason that it calls for the conclusion of the witness.

A I don't think so, not to my knowledge.

Q Where you indicated changes in the names or in the initials of names of persons appearing in the Lumbermen's book and then treated that name as similar to a name appearing in the Dun book, why did you do that? A For the reason that I thought—that I considered the same party intended.

Q In any case where you treated them as similar had you any doubt that it was intended for the same party?

Mr. Pease: Objected to as leading and as calling for the conclusion of this witness.

A There was no doubt in my mind, no, sir.

Q Most of these changes that have been referred to are in small towns are they not? A I couldn't say as to that.

Q Well, take the name of Darr, in Allegator, Mississippi; in that name it appears you struck out the letter "B" and

"Bro." was added. Now from an examination of these two books was there any doubt in your mind that the names in the two books represented the same party?

Mr. Pease: Objected to as calling for a conclusion of the witness and as leading.

1593 A In that case the name was put down as not being in Dun & Company's book.

Q Wasn't counted at all? A Wasn't counted at all, no, sir, except as not being in Dun's book.

Q Take the name of the town "Rumney Depot" where you struck out the word Depot, are there two towns in that state, one of Rumney Depot and one of Rumney? A I don't know.

Q That is, had you any doubt in your mind that that was the same town?

Mr. Pease: Objected to as calling for a conclusion of the witness.

A No, sir, the only town in Dun's book was Rumney, and Rumney does not appear in this book.

Q But did you find anything in the book to confirm your opinion that those were the same towns; for instance, did you find under those separate names in the two books names of the same parties? A Yes, sir.

Q You found some evidence then, to confirm your opinion, did you?

Mr. Pease: Objected to.

A Yes, sir.

Q Am I to understand that in every case where you treated these names as the same it was because in your judgment they represented the same person?

1594 Mr. Pease: Objected to as leading and calls for the opinion of the witness, and it is immaterial what counsel is to understand.

A Yes, sir.

Q Did you in any case in this examination intentionally treat as representing the same person, two different names or different firms in making your comparison?

Mr. Pease: We object as immaterial what his intentions were.

A No, sir.

Adjourned to March 10, 1903, at 10 A. M.

March 10, 1903.

Adjourned to March 11, 1903, at 3 P. M.

1595

March 11, 1903.
3 o'clock P. M.

Met pursuant to adjournment.
Present, as before.

Mr. Hoyne: I will ask counsel for the defendants if he has produced the red bound books in accordance with our request?

Mr. Pease: Yes, sir.

Mr. Hoyne: The books produced, being twenty-one in number, are offered in evidence and marked Complainants' Exhibits 35 to 56 inclusive.

Mr. Stadden, are these the red bound books used in connection with the January, 1902 edition of the Lumbermen's Credit Association's book?

Mr. Stadden: They are, as far as I know.

Mr. Hoyne: These are the same books that were produced before the Master??

Mr. Stadden: As I remember it they are the identical books.

Mr. Pease: We object to the introduction of these books upon the ground that they are immaterial, incompetent and irrelevant.

Mr. Hoyne: That closes our case.

By agreement of counsel the signatures of all witness are waived.

1596 United States of America,
Northern District of Illinois, } ss

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois.

Mary B. Dun, *et al.*
vs.
Lumbermen's Credit Association, *et al.* } Gen. No. 26,143

I, Marshall E. Sampsell, Clerk of the United States Circuit Court for the Northern District of Illinois, and duly appointed Special Examiner in the above entitled cause on the 8th day of October, A. D. 1902, do hereby certify that

pursuant to notice there appeared before me at my office, room 352 Monadnock Block, Messrs. Thomas M. Hoyne and John O'Connor, of Hoyne, O'Connor & Hoyne and Mr. C. K. Offield of Offield, Towle & Linthicum, solicitors for complainants and Messrs. Atwood, Pease & Loucks, solicitors for defendants in the above entitled cause, together with the witnesses for the respective parties named in the foregoing depositions, that said witnesses were by me duly cautioned and sworn to tell the truth, the whole truth and nothing but the truth touching the matters in controversy in said cause, and were duly examined on the several days in said deposition noted, and deposed and said as appears by said depositions hereto annexed. Certifica special

I further certify that the said depositions were taken down in short hand and afterwards reduced to typewriting by Kate S. Holmes, a disinterested person; that the signatures of said witnesses to their depositions were waived by agreement of counsel.

I further certify that I am not of counsel or attorney for either of the parties, nor am I interested in the 1597 event of the cause.

I further certify that my fee for taking said depositions on behalf of complainants is $238., which has been paid by complainants; that my fee for taking said depositions on behalf of defendants is $373.50, which has been paid by defendants.

In Testimony Whereof, I have hereunto set my hand and official seal this 15th day of March, A. D. 1903.

MARSHALL E. SAMPSELL,
Clerk of the Circuit Court of the United States
(Seal) *for the Northern District of Illinois, and*
Special Examiner.

(Endorsed) Filed Mar. 10, 1904, Marshall E. Sampsell, Clerk.

VOL. III.

1598 INDEX VOL. III.

Exemplified Copy of Will of Robert Graham Dun..... 1
Opinion of Judge Kohlsaat..... 28
Decree of January 9, 1905..... 31
Petition for Appeal..... 34
Assignment of Errors..... 36
Order of Feb. 6, 1905 allowing appeal upon fining bond.... 39
Order of Feb. 13, 1905, Approving Bond..... 40
Bond..... 42
Order of Feb. 27, 1905, extending time to file transcript.. 43
Order of March 7, 1905, relating to Original Exhibits.... 44
Praecipe for Record..... 46
Clerk's Certificate..... 49
Citation..... 50

d copy of R. G. ed Jan.

1599 And on to-wit: the ninth day of January, 1905, there was filed in the clerk's office of said Court in said entitled cause a certain Exemplified Copy of Will in the words and figures following to-wit:

EXEMPLIFIED COPY OF WILL OF ROBERT GRAHAM DUN.

Enregistered at full length in the Registry office of the First Registration Division of the County of Bonaventure in Reg. B. Vol. 14, page 979 at the hour of nine in the forenoon of the first day of April one thousand nine hundred & two under the No. 717.

L. P. LeBel,
Registrar.

The People of the State of New York.
By the Grace of God Free and Independent,
To all to whom these presents shall come or may concern Greeting

Know Ye, That we having examined the records and files in the office of the Surrogate of the City and County of New York, do find there remaining, a certain record of the last Will and Testament of Robert Graham Dun, deceased, to-

gether with the probate thereof and the Letters Testamentary granted thereon (said Will having been duly admitted to probate as a will of real and personal property on the tenth day of December in the year one thousand nine hundred.) in the words and figures following to-wit:

Exemplif of will Dun, 9, 1905

(Seal)

I, the undersigned, Robert Graham Dun, of the City, County and State of New York, make, publish and declare this instrument as my last Will and Testament.

First: I bequeath to my beloved wife, Mary B. Dun, twenty five thousand dollars, and direct my executors to pay that sum to her immediately after my death.

1600 Second: I bequeath to my nephew, Thomas James, my catseye scarfpin; to my nephew, Robert Dun Douglass, my catseye diamond ring; to my nephew, Benjamin Douglass, Junior my gold repeater watch and the chain and charm attached thereto; and I bequeath my other jewelry unto my wife. My fishing rods and tackle I bequeath to Benjamin Douglass, Junior.

Third. I bequeath to my wife, for her life, and after her death to The Metropolitan Museum of Art, located in the City of New York, the following described paintings now owned by me:—Cow and Calf—by Rosa Bonheur; The Surprise, by Meyer Von Bremen; The Wedding Party, by Firmin; Maternal Affection, by Gabriel Max, Shepherd with Sheep by Troyon, Stick Dance, by Gerome; Cats, by Lambert; Cattle, by Brascasset; Landscape, by Cazin; Portrait, by Benjamin Constant, The Hermitage, by Paul Porter; Portrait, by Joshua Reynolds, Scence in Normandy, by A. Bonheur; Clover Fields by Morchablon, The Ferry, by Veyrassat; Rustic Merrymaking, by David Col; Battle Scence by Sigreste; Cavalier, by Lessel; Cattle by Van Marcke; Cows and Bull, Breed Cantel, by Rosa Bonheur; The Marsh, by Daubigny; Landscape by Daubigny; Landscape, by Caror; Prairie bordered by Trees, by Rosseau; Admiration of Cupid, by Bougereau.

Fourth: Out of my personal property I direct my executors to pay off and discharge all encumbrances and liens which, at the date of my death, shall exist upon my dwell-

ROBERT GRAHAM DUN

1601 ing house and lot No. 261 Madison Avenue, Borough of Manhattan, and city of New York, or upon my residence and grounds known as "Dunmere", at Narrangansette Pier,

ed copy of R. G. ed Jan.

Rhode Island, or upon my stable and lot on East Forty-first street, New York City.

Fifth: I bequeath unto my wife, all the furniture, plate, paintings, (except the paintings above described) pictures, books and all other household goods and articles, useful or ornamental, contained in my dwelling No. 261 Madison Avenue, New York, and in my residence at Narragansett Pier, and also all the personal property and chattels contained in the stables, barns and outbuildings of said grounds at Narragansett Pier, and also my horses, carriages, sleighs and harness, and also all her wardrobe jewelry and personal ornaments.

Sixth: I devise and bequeath unto my wife, the use and occupation, rents, issues and profits of my said dwelling house and lot in New York City, and my said residence and grounds at Narragansett Pier, and of my said stable and lot on the south side of East Forty-first street, between Fourth and Lexington Avenues, in the City of New York, during her life.

Seventh: I direct my executors and their survivors and successors, upon the written request and direction of my said wife, and not otherwise, to sell and convey my said house and lot in the city of New York, my said residence and grounds at Narragansett Pier, and my said stable and lot, or any

1602 part of them, and direct them to invest the proceeds thereof, and authorize them to make investment of any part of such proceeds in the purchase of any real property in the United States, which may be selected by my wife, and give them power to change the investment in such real property from time to time upon her written request, which proceeds so invested, and real property so purchased, shall be held by my executors in trust for the use and enjoyment of my wife, who shall enjoy the use and occupation and receive the interest and income, and the rents, issues and profits thereof, during her life.

Eighth: I bequeath to my executors, their survivors and successors, the sum of five hundred thousand dollars, in trust to invest the same and to pay over the net interest and income thereof from time to time, as the same shall accrue, unto my wife during her life.

Ninth: I bequeath one hundred thousand dollars unto my sister Jane Mary Lugsdin, wife of Jay Lugsdin, or if she is deceased, to her children.

Tenth: I bequeath three thousand dollars each to Kate

and Lucy, two daughters of the late John R. Crane, deceased, and one thousand dollars to their brother John

Exempli of wil Dun, 9, 190

Eleventh: I bequeath to Robert Dun Graham, son of the late Malcom Graham, one thousand dollars; to Robert Graham Dun Douglass, son of Robert Dun Douglass, one thousand dollars, to Robert Dun Westcott, son of William and Minnie Westcott, one thousand dollars; to Robert Gra-
1603 ham Dun King, son of the late Arthur J. King, five hundred dollars.

Twelfth: I bequeath five thousand dollars to each of the following named four corporations: The Presbyterian Hospital in the City of New York, incorporated in the year eighteen hundred and sixty eight; St. Lukes's Hospital, a corporation created in the year eighteen hundred and fifty, and located in the City of New York; Mount Sinai Hospital in the City of New York; The New York Institution for the Instruction of the Deaf and Dumb, incorporated by the Laws of New York in the year eighteen hundred and seventeen' So for as the law of the State and the rules of the hospitals will permit, I direct that each of the said bequests to the three hospitals be used to endow a bed or beds therein with the right in my trustees and their successors in office and in their successors in the said business of the Mercantile Agency to nominate a patient or patients therein.

Thirteenth: I bequeath the good will of my business The Mercantile Agency and all property of mine which shall be used, employed or invested in said business at the time of my death, wheresoever situated, unto my executors, their survivors and successors, in trust nevertheless for the purposes hereinafter specified. I direct them as such trustees to continue the said business during the life of my said wife, and if my nephew, Robert Dun Douglass shall survive

ROBERT GRAHAM DUN

1604 her, then during his life, but not longer than for a peried of one year after her death. For their compensation as trustees they shall respectively receive and retain from the yearly net profits of the business the following stated percentages of those profits; My wife twenty-five per cent, Robert D. Douglass ten per cent, Francis L. Minton five per cent & Walter D. Buchanan two per cent. The said compensation shall be in lieu of all commissions and allowances to them as such trustees, and they shall not receive any further or additional compensation for their services as trus-

ied copy of R. G. led Jan.

tees. The remainder of said yearly net profits I bequeath and direct the said trustees to pay over as follows; eight twentieths thereof in equal shares to the children of my deceased sister Elizabeth Dun Douglass, and twelve-twentieths thereof to my sister Lucy A. James, during her life, and after her death, to her three children in the following specified proportions three-twentieths to her son Thomas James, three twentieths to her daughter, Mrs. Lucy J. Dun and six-twentieths to her daughter Mrs. Jennie J. Cook.

Fourteenth: At and upon the death of the survivor of my wife and my nephew Robert Dun Douglass,, or, if he shall survive her for a period of one year, then at the expiration of that period, the trust established by the last preceding clause shall terminate and thereupon I devise and bequeath the said business, good will and other property held under said trust, eight-twentieths thereof in equal shares, to the children of my deceased sister. Elizabeth Dun Douglass, and twelve twentieths thereof to my sister Lucy A. James, if she is then living, and if she is not then living to her

ROBERT GRAHAM DUN

1605 children in the following specified proportions; Three twentieths to Thomas James, three-twentieths to Mrs. Dun, and six-twentieths to Mrs. Cook.

Fifteenth: So far as I have legal capacity so to doo, I establish the following rules for the conduct of the said business of the said Mercantile Agency by the said trustees, and give to them and to their survivors and successors, powers and authority as follows: They may open new offices of the business. They may close existing offices. They may extend the business to foreign countries. They may withdraw the business from any state or country. They may make contracts with any concern engaged in a like business for an exchange or a purchase of reports or services. They may compound, release and discharge debts and liabilities due to them in the course of the business, and debts and liabilities which have arisen in the course of the business before my decease. They may adjust, compromise, pay and discharge all liabilities incurred by them in the course of the business. They may expand or contract the business or change the methods thereof as their judgment and experience may lead them to do. They may appoint and discharge such agents and servants as may be required for the proper and convenient carrying on of the business. They may

delegate to any one or more of their number any or all of the powers which they are authorized by this will or by the law, to exercise collectively. The net profits of the business are to be determined by the books as kept by the general bookkeeper of the trustees at the chief office of the business, and those books shall be prima facie evidence as between the

ROBERT GRAHAM DUN

1606 trustees and the beneficiaries, of all matters therein, and as to the amount of the profits and losses of the business. Settlements, as between the trustees and the beneficiaries, shall be made on the evidence of those books, subject to the right of any party to correct the books by competent evidence. After the settlement of any years' business, any changes, whether of profit or loss, growing out of the business of that or any prior year, shall go to increase or diminish the profits of the year in which such changes shall be determined, to the benefit or loss of the persons who shall be the beneficiaries during the year in which such changes have been determined; but any trustee who has received a percentage of the profits upon such a settlement, or his personal representatives, shall be liable to refund a like percentage of the losses thus subsequently determined and the sum so refunded shall be added to the profits of the year in which the refunding should be made. The books of account, the papers and documents of the business, at the chief office shall be open to the inspection of any person who in this will is expressly named, or described as a person entitled to a share of the profits during reasonable business hours, on the second Wednesday and Thursday of each month. The net profits shall be determined according to the course and practice of the business as carried on during the last two years of my life by myself and associates. Upon the death of any legatee to whom a percentage of the profits is bequeathed, the amount due him or her shall be determined

ROBERT GRAHAM DUN

1607 upon a settlement of the business of the whole business year in which the death occurs and the representatives of such deceased legatee shall be entitled to receive such a proportion of the percentage which the legatee would have received had he or she lived the whole year as the period of his life in the year bears to the whole year. The said compensation of any trustee who may die, or be discharged from his trust, shall in like manner be determined and ap-

ied copy of R. G. ded Jan.

portioned at the end of the year. The trustees may, in their discretion, from time to time during any business year, pay to any beneficiary, on account of his bequest, or to any trustee, on account of his compensation, one half of his proportionate share of the profits up to the time of payment and, for that purpose, may assume that the profits of the year will be the same as the profits of the last preceding year, or, if it be in the first year of the trust, the same as the profits of the last year of the business as carried on by me before my death, but, if any such payments are made, the recipients thereof shall be liable to refund, if a subsequent settlement shows that they have been overpaid. If in the opinion of my trustees, convenience requires that the said business should have a larger capital than is employed or invested therein at the time of my death they may add to the business such additional capital as they may think it requires and take the additional capital from any other personal property. Settlements and distributions of the profits may be made by the trustees, and their compensation be paid to them, from time to time without a judicial settlement, 1608 and without a judicial order or decree directing such distribution and payments. The trustees shall be severally liable for their own acts, but not liable for the acts or defaults of their co-trustees. The foregoing rules, powers and authority are not essential to the trust established by the thirteenth clause, and any of them which may be in conflict with the law, or which may affect the validity of the trust established by said clause, shall give way and be inoperative.

Sixteenth: The trust established by the thirteenth clause of this will, may be terminated at any time before the events which by that and the fourteenth clauses limit the duration of the trust by the written consent of all my surviving trustees and of my wife, if she is living and of all the beneficiaries of the trust, who at the time of the consent are of lawful age and of sufficient mental capacity to consent, and upon such a termination by consent the property embraced within the trust shall belong to the same persons (and in the same proportions) to whom it would have belonged if the trust had terminated at that time by the events which in the thirteenth and fourteenth clauses limit the duration of the trust. corner of Broadway and Reade street, in the city of New York known as the "Dun Building," Numbers 290, 292 and

Seventeenth: My lands and buildings on the Northeast

294 Broadway, I devise to my executors and trustees, their survivors and successors, in trust nevertheless, to receive the rents, issues and profits thereof, during the life of my wife, and to pay over the net rents, issues and

ROBERT GRAHAM DUN

1609 profits thereof as follows: One third thereof to my wife; one third thereof in equal shares to the children of my deceased sister, Elizabeth; and one third thereof to my sister, Lucy A. James, during her life, and after her death to her children in the following specified proportions: to Thomas James, one twelfth, to Mrs. Dun, one twelfth and to Mrs. Cook two twelfths the three together making up one third. If such a direction is lawful, I direct the said trustees to use for the purpose of the said business of The Mercantile Agency, the six upper floors of the said building or so much of said floors as may be necessary for the purpose, and without the payment of rent. At the death of my said wife, I devise the said land and building eight-twentieths thereof in equal shares to the children of my deceased sister Elizabeth Dun Douglas, twelve twentieths thereof to my sister Lucy A. James, if she is then living, and if she is not then living, to her children in the following specified proportions; three twentieths to Thomas James, three twentieths to Mrs. Dun and six twentieths to Mrs. Cook.

Eighteenth: The lots and buildings known as Numbers 32 and 34 Reade street, Manhattan, New York City, I devise to my executors, during the life of my wife, in trust to collect the rents, issues and profits thereof, and pay over the same to my residuary legatees hereinafter named, or to their representatives, in the same proportions in which they are

ROBERT GRAHAM DUN

1610 made residuary legatees. But my said executors, or their survivors, may terminate this trust as to all or any part of the property at any time, and sell and convey the property or any part thereof and distribute the proceeds among my said residuary legatees in the said proportions. At the death of my wife, any part of the said property which has not been sold and conveyed by the executors I devise to my said residuary legatees in the said proportions.

Nineteenth: So far as I have legal capacity so to do, I authorize my trustees and their survivors to delegate in writing to any one or more of their number, any of the powers which they are authorized to exercise collectively under the

eighth, seventeenth and eighteenth clauses of this will, and under the law applicable thereto.

Twentieth: All real estate belonging to me, wherever situated, not hereinbefore disposed of, I devise to my executors, and direct them to sell it and convert it into personal property and to use the proceeds thereof, together with the proceeds of my personal property not specifically bequeathed for the purpose of discharging the bequests herein made and of distribution among my residuary legatees.

Twenty-first: At the death of my wife, I direct my surviving executors and trustees, or their successors to sell and convey and convert into money the property devised and bequeathed to her for life, or held in trust for her during her life, under the foregoing sixth, seventh and eighth clauses, and to dispose of the money as follows: eight-twentieths

ROBERT GRAHAM DUN

1611 thereof in equal shares to the children of my deceased sister Elizabeth Dun Douglass, and twelve-twentieths thereof to my sister Lucy A. James, if she is then living, and if she is not then living, to her children, in the following specified proportions: three twentieths to Thomas James; three twentieths to Mrs. Dun, and six-twentieths to Mrs. Cook.

Twenty-second: I forgive and discharge all debts and liabilities which at the time of my death may be owing or due to me by my brothers in law Robert D. Buchanan, Walter D. Buchanan, William James and Jay Lugsdin, or any of them.

Twenty-third: All the rest, residue and remainder of my property, of every kind and description, including all which has not been hereinbefore effectually bequeathed or devised, I devise and bequeath eight-twentieths thereof in equal shares to the children of my deceased sister, Elizabeth and twelve-twentieths thereof to my sister Lucy A. James, if she is living at the time of my death, and if she is not then living, to her children, in the following specified proportions: three-twentieths to Thomas James, three-twentieths to Mrs. Dun, and six-twentieths to Mrs. Cook.

Twenty-fourth: By the term "children" as used in this will, I mean the direct, lawful issue of the body, but when any person included in that term is deceased, leaving lawful descendents, such descendants shall represent their parents and

take by right of representation per stirpes and not per capita in any generation.

ROBERT GRAHAM DUN

1612 Twenty-fifth. I authorize my executors and trustees and their survivors, to invest any trust money in first mortgage loans upon real estate in any state of the United States and in the first mortgage or general mortgage bonds of any railroad corporation in the United States, but I wish them to have more regard to the security of the investment than to the amount of the income received therefor, and not to take any undue risks for the purpose of obtaining a greater probable income.

Twenty-sixth. I hereby nominate and appoint as my executors and trustees, my wife, Mary B. Dun, my nephew, Robert Dun Douglass, Francis L. Minton & my brother in law Walter D. Buchanan and request and direct that no bonds be required of them.

Twenty-seventh: In case for any cause whatever my wife shall fail to take upon herself the execution of the trust established by the thirteenth clause of this will or shall for any cause., cease to be such trustee then and in that case, the percentage of profits which she would receive as trustee under that clause she shall receive as a legacy to her.

Twenty-eighth: The foregoing bequests to my wife are in lieu of dower and of all other interest in my estate.

Twenty-ninth: If my estate shall not be sufficient to pay in full all the legacies hereinbefore contained they shall be paid in full in the order in which they are mentioned herein so far as my estate shall be sufficient for that purpose,

ROBERT GRAHAM DUN

1613 but no part of the property which by the thirteenth clause is directed to be held in trust shall be used for the payment of any of the legacies so long as that trust shall continue.

Thirtieth: The trust fund of five hundred thousand dollars under the eighth clause shall be established and put out at interest as soon as practicable after my death. My executors in their discretion may pay any legacy before the expiration of a year from my death, and without deducting interest or discount. If there is any inheritance or succession tax lawfully levied upon any of the bequests contained in the

first, eighth, ninth, tenth, eleventh and twelfth clauses, the tax shall be paid out of my residuary estate. I do not intend that the power to terminate the trust which is contained in the sixteenth clause shall be an essential part of the trust established by the thirteenth clause, and if the power would impair the validity of the trust, the power shall not exist.

Thirty-first. The paintings bequeathed to the Metropolitan Museum of Art are for permanent exhibition in the Museum, but when accepted by the Trustees of the Museum for that purpose, are to be the property of the Museum without conditions. If the Trustees are unwilling to accept all of the paintings for that purpose, any which they do not so accept I bequeath to my residuary legatees. For the purpose of making division between the said legatees, my executors are to sell the paintings and divide the proceeds. My wife during her life shall have the possession of all of the said paintings without giving security.

Thirty-second: I hereby revoke all my former wills.

1614 In Witness Whereof, I have hereunto set my hand and seal on this twenty seventh day of April, nineteen hundred.

R. G. DUN. (Seal).

Subscribed, published and declared by Robert Graham Dun, as and for his last Will and Testament in the presence of us, who, at his request and in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses, at the Dun Building, in the City of New York, on this twenty seventh day of April nineteen hundred.

EDWARD GREEN,
36 Washington St.
East Orange, N. J.

JAS. HARRAL,
50 Berkley Place,
Brooklyn.

T. W. CUNLIFFE,
New Brighton, N. Y.

1615 Surrogate's Court.
New York County.

In the matter of proving the Will of
Robert Graham Dun, deceased.
City and County of New York, } ss.

Francis L. Minton, being duly sworn as a witness herein, says that he is a counselor at law and superintended the execution of the instrument now offered for probate as the will of Robert Graham Dun, deceased. Deponent's attention is now called to the 3rd, 4th, 5th and sixth lines of the 7th page of said instrument and deponent saw the decedent Robert Graham Dun write the said lines before the execution of said instrument.

F .L. MINTON.

Witness sworn and examined before me, this 10th day of December, 1900.

JACOB WASHBURN,
Assistant to the Surrogate, New York County.

1616 Surrogate's Court.
County of New York.

In the Matter of Proving The Last Will and Testament of Robert Graham Dun, Deceased, As A Will of Real and Personal Property

County and State of New York, ss.

Edward Green of East Ornage, New Jersey, being duly sworn as a witness in the above entitled matter, and examined on behalf of the applicant to prove said will, says: I was acquainted with Robert Graham Dun, now deceased; I knew the above named decedent for Eight years before his death. The subscription of the name of said decedent to the instrument now shown to me and offered for probate as his last will and testament, and bearing date the 27th day of April in the year one thousand nine hundred was made by the decedent at the city of New York on the 27th day of April in the year one thousand nine hundred in the presence of myself and

Copy
G.
dan.

James Harral and Thurlow W. Cunliffe., the other subscribing witnesses. At the time of such subscription the said decedent declared the said instrument so subscribed by him to be his last will and testament: and I thereupon signed my name as a witness at the end of said instrument, at the request of said decedent and in his presence.

The said decedent at the time of so executing said instrument was upwards of the age of twenty one years, and in my opinion of sound mind, memory and understanding, not under any restraint or in any respect incompetent to make a will. I also saw said James Harral and Thurlow W.
1617 Cunliffe, the other subscribing witnesses sign their names at the end of said will, and know that they did so at the request and in the presence of said decedent.

EDWARD GREEN.

Witness sworn and examined before me this 10th day of December, 1900.

JACOB WASHBURN,
Assistant to the Surrogate, New York County.

1618 Surrogate's Court,
County of New York.

In the Matter of Proving The Last Will and Testament of Robert Graham Dun, Deceased, As A Will of Real and personal property

County and State of New York, ss.

Thurlow W. Cunliffe, of Richmond Borough, New York City, being duly sworn as a witness in the above entitled matter, and examined on behalf of the applicant to prove said will, says: I was acquainted with Robert Graham Dun, now deceased; I knew the above named decedent for seventeen years before his death. The subscription of the name of said decedent to the instrument now shown to me and offered for probate as his last will and testament, and bearing date the 27th day of April in the year one thousand nine hundred was made by the decedent at the city of New York on the 27th day of April in the year one thousand nine hundred in the presence of myself and Edward Green and James Harral, the other subscribing witnesses. At the time of such

subscription the said decedent declared the said instrument so subscribed by him to be his last will and testament; and I thereupon signed my name as a witness at the end of said instrument at the request of said decedent and in his presence.

The said decedent at the time of so executing said instrument was upwards of the age of twenty one years, and in my opinion of sound mind, memory and understanding, not under any restraint or in any respect incompetent to make a will. I also saw said Edward Green and James Harral,
1619 the other subscribing witnesses sign their names at the end of said will, and know that they did so at the request and in the presence of said decedent.

THURLOW W. CUNLIFFE.

Witness sworn and examined before me this 10th day of December, 1900.

JACOB WASHBURN,
Assistant to the Surrogate, New York County.

1620 Surrogate's Court,
County of New York.

In the Matter of Proving The Last Will and Testament of Robert Graham Dun, Deceased, As A Will of Real and Personal Property

County and State of New York, } ss.

James Harral, of Brooklyn, Borough, New York City being duly sworn as a witness in the above entitled matter, and examined on behalf of the applicant to prove said will, says: I was acquainted with Robert Graham Dun, now deceased; I knew the above named decedent for Twenty five years before his death. The subscription of the name of said decedent to the instrument now shown to me and offered for probate as his last will and testament, and bearing date the 27th day of April in the year one thousand nine hundred was made by the decedent at the city of New York on the 27th day of April in the year one thousand nine hundred in the presence of myself and Edward Green and Thurlow W. Cunliffe, the other subscribing witnesses. At the time of such subscription the said decedent declared the said instrument so subscribed by him to be his last will and testament; and I

thereupon signed my name as a witness at the end of said instrument, at the request of said decedent and in his presence.

The said decedent at the time of so executing said instrument was upwards of the age of twenty one years, and in my opinion of sound mind, memory 4nd understanding, not under any restraint or in any respect incompetent to make a will. I also saw said Edward Green and Thurlow W. 1621 Cunliffe, the other subscribing witnesses sign their names at the end of said will, and know that they did so at the request and in the presence of said decedent.

JAMES HARRAL.

Witness sworn and examined before me this 10th day of December, 1900.

JACOB WASHBURN,
Assistant to the Surrogate, New York County.

At a Surrogate's Court held in and for the County of New York, at the Surrogate's office in the City of New York on the 10th day of December, in the year 1900.

Present,

Hon. Abner C. Thomas, Surrogate.

In the Matter of proving the last Will and Testament of Robert Graham Dun, deceased,

The Citation herein having been duly issued, served and returned, the allegations of the parties appearing having been heard, and the proofs having been duly taken by the Surrogate among other things as to the execution of said instrument bearing date April 27th, 1900, and the probate of the said Will not having been contested, and it appearing to the Surrogate that the Will was duly executed and that the testator at the time of executing it was in all respects competent to make a will and not under restraint, It is Ordered, Adjudged and decreed that the instrument offered for probate herein be and the same hereby is admitted to pro-
1622 bate as the last Will and Testament of the said deceased, valid to pass real and personal property, and that Letters Testamentary be issued thereon to the executors who may qualify thereunder.

ABNER C. THOMAS,
Surrogate.

The People of the State of New York,
By the Grace of God Free and Independent.

To All to whom these Presents shall come or whom they may concern, Send Greeting:

Know ye, That at the County of New York, on the 10th day of Dec. in the year of our Lord one thousand nine hundred before Hon. Abner C. Thomas a Surrogate of our said County, the Last Will and Testament of Robert Graham Dun deceased, was proved and is now approved and allowed by us; and the said deceased having been at the time of his death a resident of the County of New York, by means whereof the proving and registering said Will and the granting Administration of all and singular the goods, chattels and credits of the said Testator and also the auditing, allowing and final discharging the account thereof, doth belong unto us, the Administration of all and singular the goods, chattels and credits of the said deceased and any way concerning his Will, is granted unto Mary B. Dun and Walter D. Buchanan, each of the County and state of New York, Robert Dun Douglas, of Orange, New Jersey, and Francis L. Minton of the Borough of Brooklyn, New York, the Executors in the said Will named, they being first duly sworn, well, faithfully and honestly to discharge the duties of such executors.

1623 In Testimony Whereof, we have caused the seal of office of the Surrogates' Court of the county of New York to be hereunto affixed.

Witness Hon. Abner C. Thomas, a Surrogate of our said County of New York at said County, the 13th day of Dec. in the year of our Lord one thousand nine hundred.

J. Fairfax McLaughlin,
(Seal) *Clerk of the Surrogates' Court.*

All which we have caused by these Presents to be exemplified and the seal of our said Surrogates' Court to be hereunto affixed.

Witness, Hon. Abner C. Thomas, a Surrogate of the County of New York, at the City of New York, the third day of February in the year of our Lord one thousand nine hundred and two and of our independence the one hundred and twenty sixth.

J. Fairfax McLaughlin,
(Seal). *Clerk of the Surrogate Court.*

al copy
R. G.
al Jan.

I, Abner C. Thomas, a Surrogate of said County and presiding Magistrate of the Surrogates' Court, do hereby certify that J. Fairfax McLaughlin, whose name is subscribed to the preceding exemplification, is the clerk of said Surrogate' Court of the County of New York, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the exemplification is the seal of our said Surrogate' Court, and that the attestation thereof is in due form and according to the form of attestation used in this State.

Dated, New York, February 3rd, 1902.

ABNER C. THOMAS,
Surrogate.

1624 State of New York, }
County of New York, } ss

I, J. Fairfax McLaughlin, Clerk of the Surrogates' Court of the County of New York, do hereby certify that Hon. Abner C. Thomas whose name is subscribed to the preceding certificate, is the presiding Magistrate of the Surrogates' Court of the County of New York, duly elected, sworn and qualified, and that the signature of said Magistrate to said certificate is genuine.

In Testimony whereof, I have hereto set my hand and affixed the seal of the said Court, this 3rd day of February, 1902.

J. FAIRFAX MCLAUGHLIN,
(Seal) *Clerk of the Surrogates' Court.*

(Endorsed on the back)., No. 30. Surrogates' Court, County of New York. In the Matter of the Estate of Robert Graham Dun, Deceased. (Exemplified Copy.)

Filed 1st of April, 902. at 9 A. M.

L. P. LEBEL,
Registrar.

Fee $8.25
For Certificate see first page.

L. P. L.
Rgtr.

(50 cts. Internal Revenue stamp
Duly canceled.
Filed Jany. 9, 1905, Marshall E. Sampsell, Clerk.

1625 And on to-wit: the ninth day of January, 1905, there was filed in the Clerk's office of said Court in said entitled cause a certain opinion in words and figures following to-wit: Opinion, Jan. 9, 1905.

1626 OPINION

IN THE CIRCUIT COURT OF THE UNITED STATES

For the Northern District of Illinois.

Northern Division.

Mary B. Dun *et al.*
vs.
Lumberman's Credit Association *et al.* } No. 26143.

Kohlsaat, J.

This cause comes before the Court on final hearing.

The bill was filed by the complainants to restrain the defendants from publishing, printing, reprinting, binding, completing, copying, executing, finishing or giving away etc. any of the matter contained in the copyrighted March, July and September 1901 Edition of Complainants' rating book.

Complainants and their predecessors have for more than 44 years been engaged in the publication and distribution to subscribers, of a reference or rating book, giving information as to the financial standing of persons and firms, for the use in all branches of trade in the United States, Canada and the British provinces. This has required a great amount of labor and the accumulation of a vast number of documents and memoranda bearing upon the subject matter. Defendants have for about 26 years been engaged in the preparation and distribution to subscribers of a similar book for the use of the lumber and kindred trades in the United States and Manitoba. The bill charges that prior to 1893, the defendant Clancy made up his reference book in great part from complainants' book without making any original investigation; that after-
1627 wards, when his business was merged into the defendant the Lumbermen's Credit Association, it continued said course up to the date of filing said bill.

From the evidence it appears that the defendant admits using complainants' book, but insists that it did so merely for the purpose of comparison and for information as to names,

filed Jan. 15.

but that in every case it at great cost, procured original and independent information as to the rating and other facts contained in defendants' book. There are in respondents' reference book more than 60,000 names. The evidence shows that there are on hand more than 1,000,000 reports, replies to inquiries, etc. It further appears that defendants receive large numbers of newspapers, magazines, trade journals and bulletins; that they use traveling men, lumber dealers, agents, lawyers, Justices of the Peace, mercantile associations, railroad companies and the clippings sent out by a number of clipping bureaus. At times defendants' mail reaches approximately 2000 pieces of mail per day. A large force of employees and large offices are required in the management of the business.

On the other hand a number of instances are disclosed in the evidence which have strong tendency to establish the charge that defendants have used some of complainants' copyrighted material in making their book. The same mistakes occur in each. In one case complainants witness swears to an entirely fictitious item placed in complainants' book as a test, which was duly appropriated by defendants. In regard to a number of items said to be duplicated, defendants show original investigation. Still, when all the explanations are considered, it seems to be fairly established that defendants did take some of the items complained of. Generally such indicia is held to indicate a substantial theft of copyright property, but taking all the evidence together I am satisfied that the items selected as tests constitute the bulk of all the items taken, and that they are of small moment in comparison with the whole.

1628 Defendants' book gives information on 113 subjects, complainants' on 19. When we consider that the matter consists of names and other data, which, when true, must be the same in any report, and that in many cases the source of information must often be the same with both the parties hereto, it would seem to be just to lay down a different rule from that which obtains in cases where syllabi and summaries of law and fact are appropriated. Here seems to be no attempt to coin money out of another's labor. It is clearly a case in which the matter taken must be substantial and such as to really work injury to complainants.

Drone on Copyright, p 413.
Am. & Eng. Enc. of Law, Vol. 7, p 572.
Bohn v. Bogue 10 Jur. 421.
Lawrence v. Dana, et al., Fed. Cases No. 8136.

When we take note of the character of the items alleged to be appropriated on the one hand and the consequence of granting the injunction prayed for, it would be an unwarrantable use of the power of the court so to do. Opinion, J 9, 1905.

The bill is dismissed for want of equity.

(Endorsed) Filed January 9, 1905, Marshall E. Sampsell, Clerk.

1629 And on to-wit: the ninth day of January, 1905, being one of the days of the regular December term of said Court, 1904, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

DECREE OF JANUARY 9, 1905. Decree, J 1905.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the last Will of Robert G. Dun, deceased,	}
vs.	} 26,143
Lumbermen's Credit Association, a corporation, William Clancy and Burton W. Stadden.	}

This cause coming on to be heard upon the bill of complaint filed herein by Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the last Will of Robert G. Dun, deceased, complainants, the separate answers of Lumbermen's Credit Association, a corporation, William Clancy and Burton W. Stadden, defendants, thereto, and complainants' replications to said answers, and the testimony taken and exhibits introduced in evidence before Henry W. Bishop, one of the Masters in Chancery of this Court, upon the hearing of the motion for a temporary injunction herein, which testimony and exhibits were heretofore ordered to be considered upon the final hearing 1630 herein; and upon the testimony taken and exhibits introduced in evidence before Marshall E. Sampsell, heretofore appointed Special Examiner in this cause to take the evidence herein, all of which evidence and exhibits have been hereto-

filed Jan. 5.

fore reported to the Court and filed herein by said Master in Chancery and Special Examiner; and the Court having read and considered all of the evidence taken before said Master in Chancery and before said Special Commissioner, and the exhibits offered and received in evidence, and having heard and considered the arguments of counsel, and the briefs filed by counsel for the respective parties hereto; and being fully advised in the premises; Finds:

That the complainants have not proved the allegations of the bill of complaint herein; that the complainants are not entitled to the relief therein prayed for; that the facts set forth in the said answers of the defendants are true; and that the equities of this cause are with the defendants.

It is therefore Ordered, Adjudged and Decreed, that the said bill of complaint be and the same is hereby dismissed for want of equity.

And it is further Ordered, Adjudged and Decreed that the defendants, Lumbermen's Credit Association, a corporation, William Clancy and Burton W. Stadden, have and recover of and from the complainants, Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the last Will of Robert G. Dun, deceased, their costs in this cause, to be taxed by the clerk of this Court, and that they have execution against the complainants therefor.

1631 Thereupon, the complainants pray an appeal from this decree to the Circuit Court of Appeals in and for the Seventh Circuit, which is allowed upon their filing a bond in the sum of five hundred ($500.) dollars, with security to be approved by the Court within forty (40) days from this date, and upon filing an assignment of errors.

1632 And on to-wit: the sixth day of February, 1905, came the complainants in said entitled cause by their solicitors and filed in the Clerk's office of said Court their certain Petition for Appeal in words and figures following towit:

PETITION FOR APPEAL.

Petition
peal,
6, 190

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois.

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan; Executors and trustees under the Will of Robert G. Dun, deceased,	In Equity. Gen. No. 26,143
vs.	
The Lumbermen's Credit Association, William Clancy and Burton W. Stadden	

The above named complainants, conceiving themselves aggrieved by the decree made and entered on the 9th day of January, A. D. 1905, in the above entitled cause, do hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Seventh Circuit, for the reasons specified in the assignment of errors which is filed herewith, and they pray that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Seventh
1633 Circuit.

HOYNE, O'CONNOR & HOYNE, and
CHAS. K. OFFIELD,
Solicitors for Complainants.

Dated, February 6th, 1905.

The foregoing claim of Appeal is allowed.

Dated, February 6th, 1905.

(Endorsed) Filed Feb., 6, 1905, Marshall E. Sampsell, Clerk.

1634 And on the same day to-wit: the sixth day of February 1905, came the complainants in said entitled cause by their solicitors and filed in the clerk's office of said court their certain assignment of errors in words and figures following to-wit:

61
05.
of
ed Feb.

ASSIGNMENT OF ERRORS.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois.

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the Will of Robert G. Dun, deceased.	In Equity. Gen. No. 26,143.
vs.	
The Lumbermen's Credit Association, William Clancy and Burton W. Stadden.	

Assignment of Errors.

And now on the 6th day of February, A. D. 1905, come the complainants by Hoyne, O'Connor & Hoyne and Charles K. Offield, their solicitors, and say that the decree in said cause is erroneous and against the just rights of said complainants for the following reasons:

1. Because the evidence showed that in compiling the January 1901 edition of the reference book of the defendants, The Lumbermen's Credit Association, the defendants, and each of them, copied and pirated names and ratings from the 1635 copyrighted September 1900 edition of the complainants' reference book.

2. Because the evidence showed that in compiling the July, 1901 edition of the reference book of the defendant, The Lumbermen's Credit Association, the defendants, and each of them, copied and pirated names and ratings from the copyrighted March 1901 edition of complainants' reference book.

3. Because the evidence showed that in compiling the January 1902 edition of the reference book of the defendant, The Lumbermen's Credit Association, the defendants, and each of them, copied and pirated genuine and fictitious names and ratings from the copyrighted September 1901, edition of complainants' reference book.

4. Because the evidence showed that in compiling the Janu-

ary and July 1901, and the January 1902 editions of the reference book of the defendant, The Lumbermen's Credit Association, the defendants and each of them, made an unlawful use of complainants' copyrighted reference books by appropriating to their own use a material part of the information contained in complainants' said books, without making any original investigation of their own.

5. Because the evidence showed that in compiling the January and July 1901 and January 1902 editions of the reference book of the defendant, The Lumbermen's Credit Association, the defendants and each of them, used the complainants' copyrighted reference books as the basis and source of a material part of the said editions of the said reference book of the said Lumbermen's Credit Association, and appropriated the results of complainants' labor to their own use, without making any independent investigation of their own.

6. Because the evidence showed that the system adopted in compiling the January and July 1901 and January 1902 editions of the reference book of the defendant, The Lumbermen's Credit Association was unauthorized and unlawful, and 1636 was an infringement upon the rights of complainants; that by copying names and ratings from the books of complainants' and submitting them to correspondents of the said The Lumbermen's Credit Association for reports, the defendants, and each of them, furnished to such correspondents the information to be returned by them, and such reports so returned were therefore merely colorable and fraudulent.

7. Because the evidence showed that material and substantial parts of the January and July 1901 and January 1902 editions of the reference book published by the defendant The Lumbermen's Credit Association, were copied either bodily or with only colorable changes from the copyrighted books of complainants' and that the financial ratings placed opposite the names of a large number of persons and corporations in the Lumbermen's Credit Association's books were derived by the defendants, and each of them from the copyrighted books of the complainants' and not from information obtained by the defendants, or any of them, from original sources, through their own efforts, and by their own labor, and at their own expense.

8. Because the Court erred in dismissing the bill of complaint for want of equity.

9. Because the court erred in not finding for the complainant as prayed for in the bill of complaint, and in not ordering and entering a decree, as therein prayed for.

Wherefore the said complainants pray that the said decree be reversed, and that the said Court may be directed to enter a decree in accordance with the prayer of the bill.

HOYNE, O'CONNOR & HOYNE, and
CHAS. K. OFFIELD,
Solicitors for Complainants.

(Endorsed. Filed Feb. 6, 1905, Marshall E. Sampsell, Clerk.

1637 And on to-wit: the sixth day of February, 1905, being one of the days of the regular December term of said Court, 1904, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

ORDER OF FEBRUARY 6, 1905, ALLOWING APPEAL UPON FILING BOND IN THE SUM OF FIVE HUNDRED DOLLARS.

Mary B. Dun, *et al.*
vs.
Lumbermen's Credit Association, *et al.* } 26,143

Upon motion of the complainants' solicitor and upon filing the petition for appeal and assignment of errors, It is Ordered that an appeal be allowed the complainants herein upon filing their appeal bond to the approval of the Court in the sum of five hundred dollars within thirty days.

1638 And on to-wit: the 13th day of February, 1905, being one of the days of the regular December term of said Court, 1904, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

ORDER OF FEBRUARY 13, 1905, APPROVING BOND, ETC.

Order 190 bon

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the Will of Robert G. Dun, deceased,

vs.

The Lumbermen's Credit Association, William Clancy and Burton W. Stadden,

} 26143.

Now again come the complainants by their solicitor and present their bond on appeal in the sum of five hundred dollars with William A. Douglass, as surety, which is approved by the Court and ordered to be filed. And said complainants having filed their Petition for Appeal together with their assignment of errors and having fully complied with the rules of the Circuit Court of Appeals for this Circuit and of this Court, It is Ordered that the order of February sixth, 1905 entered herein be and the same is hereby made absolute, said appeal allowed and order that a citation issue instanter, returnable in thirty days to said United States Circuit Court of Appeals.

1639 And on to-wit: the 13th day of February, 1905, there was filed in the clerk's office of said Court in said entitled cause a certain bond on appeal in words and figures following to-wit:

Bond file 190

1640 Know All Men By These Presents, That we, Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, executors and trustees under the Will of Robert G. Dun, deceased, as principals and William A. Douglass, as surety are held and firmly bound unto The Lumbermen's Credit Association, Willam Clancy and Burton W. Stadden, in the full and just sum of five hundred dollars ($500.00) to be paid to the said The Lumbermen's Credit Association, William Clancy and Burton W. Stadden, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this Eleventh day

of February in the year of our Lord one thousand nine hundred and five.

Whereas, lately at a Circuit Court of the United States for the Northern District of Illinois, Northern Division, in a suit depending in said Court, between Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, executors and trustees under the Will of Robert G. Dun, deceased, complainants and The Lumbermen's Credit Association, William Clancy and Burton W. Stadden, defendants, a decree was rendered against the said Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, executors and Trustees under the will of Robert G. Dun, deceased, and the said Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, executors and trustees under the will of Robert G. Dun, deceased, having obtained an appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said The Lumbermen's Credit Association, William Clancy and Burton W. Stadden, citing and admonishing them to be and appear at a United States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago within 30 days from the date hereof.

Now, The Condition Of The Above Obligation Is Such, That if the said Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, executors and trustees under the Will of Robert G. Dun, deceased shall prosecute said appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—
PETER R. GATENS.

MARY B. DUN (Seal)
ROBERT DUN DOUGLASS (Seal)
FRANCIS L. MINTON (Seal)
WALTER D. BUCHANAN (Seal)
Executors & Trustees, under Will of Robert G. Dun deceased.
WILLIAM A. DOUGLASS, (Seal.)

Approved
Feby. 13, 1905,
KOHLSAAT,
J.

(Endorsed) Filed Feb., 13, 1905. Marshall E. Sampsell, Clerk.

1641 And on to-wit: the 27th day of February, 1905, being one of the days of the regular December term of said Court, 1904, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit: Order 190 tim

ORDER OF FEBRUARY 27, 1905, EXTENDING TIME TO FILE TRANSCRIPT OF RECORD.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the Will of Robert G. Dun, deceased.	26,143
vs.	
The Lumbermen's Credit Association, William Clancy and Burton W. Stadden.	

Now come the parties by their solicitors a[illegible] upon motion of complainants, the time to file the transcrip[illegible] record in the United States Circuit Court of Appeals for the Seventh Circuit is hereby extended to May first, 1905.

1642 And afterwards to-wit; on the seventh day of March, 1905, being one of the days of the regular December term of said Court, 1904, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

ch 7.
ibits.

ORDER OF MARCH 7, 1905.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton, and Walter D. Buchanan, Executors and Trustees under the Will of Robert G. Dun, deceased,	26,143
vs.	
The Lumbermen's Credit Association, William Clancy and Burton W. Stadden.	

Now come the complainants, by Hoyne, O'Connor and Hoyne, and Charles K. Offield, their solicitors, the said defendants appearing by Atwood and Pease, Corbin and Loucks, their solicitors; and it appearing to the Court that the exhibits offered as evidence in this case are of such a character that they cannot be copied into the transcript of the record, and that the said original exhibits should be inspected by the United States Circuit Court of Appeals; upon motion of said solicitors for the complainant,

It is Ordered that copies of said original exhibits may be omitted from the transcript of the record in this case, and that the original books and papers constituting such exhibits be certified and transported by the Clerk of this Court to the said United States Circuit Court of Appeals for the
1643 Seventh Circuit, in connection with the transcript of the record in this case, to be used and referred to in said United States Circuit Court of Appeals by the parties hereto, in the same manner as though copies of said exhibits had been embodied in the record of this case; said original exhibits to be returned to the clerk of this Court after the final disposition of said cause in the United States Circuit Court of Appeals.

1644 PRAECIPE FOR RECORD. Praecipe for Mar

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois—

Northern Division.

Mary B. Dun, Robert Dun Douglass, Francis L. Minton, and Walter D. Buchanan, Executors and trustees under the Will of Robert G. Dun, deceased,	In Chancery. 26,143
vs.	
The Lumbermen's Credit Association, William Clancy and Burton W. Stadden,	

To the Clerk of the above entitled Court—

You will please prepare transcript of the record in this Cause, to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Seventh Judicial Circuit, under the appeal heretofore perfected to said Court and include in the said transcript the following pleadings, proceedings and papers on file to-wit:

Bill of Complaint filed January 17, 1902.

Chancery Subpoena issued Jany., 23, 1902, together with the Marshal's return thereon endorsed.

Answer of Lumbermen's Credit Association filed April 12, 1902.

Answer of William Clancy and Burton W. Stadden filed May 10, 1902, omitting Exhibit A. which is identical with Exhibit A. set out in the answer of Lumbermen's Credit Association.

Replication to Answer of Lumbermen's Credit Association, filed April 24, 1902.

Replication to answer of Wm. Clancy and Burton W. Stadden filed May 16, 1902.

Order of January 25, 1902, referring case to Henry W. Bishop, Master on the motion for a preliminary injunction.

Petition for rule on witnesses to produce certain evidence filed March 8, 1902.

Notice filed March 8, 1902.

Order of March 8, 1902, granting leave to complainants to examine 28 additional names.

1645 Subpoena duces tecum filed May 10, 1902.

Notice filed May 9, 1902.

Order entered May 10, 1902, denying motion to produce information called for.

Order entered June 10, 1902, directing clerk not to issue commission to take depositions.

Order entered July 3, 1902, withdrawing motion for preliminary Injunction.

Order entered October 8, 1902, appointing Marshall E. Sampsell, Special Examiner.

Affidavits of Stanley T. Prudence, James B. Gilbert, Fred W. Wright, and Norman H. Young all filed January 17, 1902.

Affidavits of Burton W. Stadden, William Clancy, Philip C. Howard and A. L. Knefler, all filed January 25, 1902.

Affidavit of William A. Douglass and John O'Connor filed May 10, 1902.

Depositions of William L. Halsey, James Statham Goree, Robert Dun Douglass, Joseph B. Payez, Lincoln Goodman, James H. Forlong, E. Lovvorn, J. M. McBride, J. A. Head, E. Gillman, Juliam B. Parke, Dr. A. W. Cawthon, Nathan Kahn, Robert L. Dudley, William H. Radcliff, Walter D. Brown, Arthur B. Wigley, Thorvald Solberg Arthur Crisfield, C. Powell Grady, Frederick Wm. Ashley, Philip H. Marquard, Frank B. Cattrall, Julian L. Swaim, William Wagner, Manilius Schreiner, Jacob Himebaugh, William Schreiner, John Brawley and John A. Brawley, J. Nott Hoffman, John A. McBride, C. D. Malloy, E. S. Koepenick.

Testimony taken before Henry W. Bishop.

Testimony taken before Marshall E. Sampsell, as special examiner.

1646 Opinion of Judge Kohlsaat.

Final decree of Court, dismissing bill.

Petition for Appeal.

Assignment of Errors.

Order of Feb. 6, 1905, allowing appeal upon filing bond in the sum of five hundred dollars.

Order entered February 13, 1905, approving bond, etc.

Bond on Appeal.

Order of February 27, 1905, extending time to file transcript of record.

Order of March 7, 1905, relating to Original Exhibits.

Said transcript to be prepared as required by law and the rules of this Court and the rules of the United States Circuit Court of Appeals for the Seventh Circuit and on file in the office of the clerk of the said Circuit Court of Appeals at Chicago, before May second, 1905. Praecipe cript, March

HOYNE, O'CONNOR & HOYNE,
Solicitors for Appellants.

(Endorsed) Filed March 7, 1905, Marshall E. Sampsell, Clerk.

1647 Northern District of Illinois, Eastern Division. } ss.

I, Marshall E. Sampsell, Clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing contained in three Volumes markes respectively Vol. I. Vol. II and Vol. III. to be a true and complete transcript of the proceedings had of record in said Court and made in accordance with Praecipe filed in the cause entitled Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the Will of Robert G. Dun, deceased, Complainants vs. Lumbermen's Credit Association and Burton W. Stadden, Defendants, General Number 26, 143, as the same appear from the original records and files of said Court now remaining in my custody and control. Certifica

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in the City of Chicago, in said District, this Sixth day of April, 1905.

MARSHALL E. SAMPSELL,
Clerk.

(Seal)

ch led Feb
ibi

1648 United States of America, } ss.

The President of the United States, To The Lumbermen's Credit Association, William Clancy and Burton W. Stadden, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago, within thirty days from the date hereof, pursuant to an appeal filed in the Clerk's Office of the Circuit Court of the United States for the Northern District of Illinois, Northern Division, wherein Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, executors and trustees under the will of Robert G. Dun, deceased, are appellants, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Christian C. Kohlsaat, Judge of the Circuit Court of the United States, this 11th day of February, in the year of our Lord one thousand nine hundred and Five.

KOHLSAAT, *J.*

We hereby accept service of the within citation for the said Lumbermen's Credit Association, William Clancy and Burton W. Stadden.

ATWOOD, PEASE, CORBIN & LOUCKS,
Solrs. for said Parties.

Feby. 15/05.

(Endorsed) Filed Feb. 16, 1905, Marshall E. Sampsell, Clerk.

United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 1036, inclusive, contain a true copy of the printed record filed in this court on May 31, 1905, which was prepared for the printer, indexed, supervised and distributed by me in accordance with the rules of this court and upon which the cause was heard and determined by the United States Circuit Court of Appeals for the Seventh Circuit, in the case of Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the Will of Robert G. Dun, Deceased, *vs.* The Lumbermen's Credit Association, William Claney and Burton W. Stadden, No. 1178, October Term, 1905, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this twelfth day of October A. D. 1906.

[Seal United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held at the United States Court Rooms in the City of Chicago, in said Seventh Circuit, on the fourth day of October, 1904, of the October term in the year of the Lord one thousand nine hundred and four and of our Independence the one hundred and twenty-ninth.

And afterwards, to-wit: On the twelfth day of April, 1905, in the October term last aforesaid, came the appellants, by their counsel, and filed in the office of the clerk of this court a certain motion, which motion is in the words and figures following, to-wit:

United States Circuit Court of Appeals for the Seventh Circuit.

MARY B. DUN, ROBERT DUN DOUGLASS, FRANCIS L. MINTON, and WALTER D. BUCHANAN, Executors and Trustees under the Will of Robert G. Dun, Deceased,

vs.

THE LUMBERMEN'S CREDIT ASSOCIATION, WILLIAM CLANCY, and BURTON W. STADDEN.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

Now comes the complainant, by Hoyne, O'Connor & Hoyne and Charles K. Offield, their solicitors, and move the court that copies of the exhibits offered in evidence in the said Circuit Court may be omitted from the transcript of the record, and the original exhibits certified to this court, by an order of said Circuit Court, may be used and referred to in this Court upon the hearing and in the argument of this court, in the same manner as though said exhibits had been embodied in the transcript of the record and printed.

And the said appellants show to the court the following reasons why said motion should be granted.

1. That said exhibits consist of, (*a*) two or three large printed reference books of the appellant containing thousands of names, ratings and other information; (*b*) several of the printed reference books of appellees containing hundreds of names, ratings, and other information; (*c*) numerous printed pamphlets and papers introduced in evidence for reference only; (*d*) numerous printed blank forms, reports and other papers containing but little written matter or information.

2. That comparatively little of the matter contained in said exhibits is material to the hearing of the case, the said exhibits being useful chiefly for reference in certain particular cases and to illustrate the methods of business pursued by the respective parties.

3. It is important in some cases that this court should inspect the original books and papers because they contain memoranda, signs and check marks which could not well be reproduced in copying.

4. It is impossible to embody the said exhibits in the transcript of the record without incurring an enormous expense, which in the opinion of appellants and their counsel would be wholly useless and very burdensome, and would enlarge the record to such size as to impose much additional labor upon both the court and counsel.

5. That the Circuit Court, recognizing the propriety and necessity of transmitting the original exhibits to this court, did, on the 7th day of March, 1905, enter an order in this cause, directing that copies of said original exhibits might be omitted from the transcript

of the record, and directing the clerk of said court to certify and transport the said original exhibits to this court, to be used and referred to by the parties hereto in the same manner as though copies thereof had been embodied in the record of the case.

And appellants show to the court that the object of this motion is to simplify the record and lighten the labor of court and counsel by presenting to the court only such parts of said exhibits as are necessary to the proper hearing and determination of this cause.

Respectfully submitted,

HOYNE, O'CONNOR & HOYNE AND
CHARLES K. OFFIELD,
Solicitors and of Counsel for Appellants.

Endorsed: Filed Apr. 12, 1905. Edward M. Holloway, Clerk.

And afterwards, on the same day, to-wit: On the twelfth day of April, 1905, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

WEDNESDAY, *April* 12, 1905.

Court met pursuant to adjournment.

Present: Hon. Peter S. Grosscup, Circuit Judge presiding. Hon. Francis E. Baker, Circuit Judge. Hon. William H. Seaman, Circuit Judge.

1178.

MARY B. DUN ET AL.
vs.
LUMBERMEN'S CREDIT ASSOCIATION ET AL.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

Upon motion of counsel for appellant, it is ordered that the original exhibits used at the hearing of this cause in the Circuit Court of the United States for the Northern District of Illinois may be used at the hearing of this cause in this court.

And afterwards, to-wit: On the thirteenth day of April, 1905, in the October term last aforesaid, came the appellants by their counsel Mr. Thomas M. Hoyne, Mr. John O'Connor, Mr. Charles K. Offield, Mr. Henry S. Towle, Mr. Charles C. Linthicum, and Mr. Maclay Hoyne, and filed in the office of the clerk of this court their appearance, which appearance is in the words and figures following, to-wit:

United States Circuit Court of Appeals for the Seventh Circuit,
October Term, 1904.

No. 1178.

MARY B. DUN ET AL., Appellants,
vs.
THE LUMBERMEN'S CREDIT ASSOCIATION.

The Clerk will enter *my* appearance as Counsel for the Appellants.

HENRY S. TOWLE.
CHAS. C. LINTHICUM.
MACLAY HOYNE.
THOS. M. HOYNE.
JOHN O'CONNOR.
CHAS. K. OFFIELD.

Endorsed: Filed Apr. 13, 1905. Edward M. Holloway, Clerk.

And afterwards, to-wit: On the sixth day of June, 1905, in the October term last aforesaid, came the appellees by their counsel Mr. Fred H. Atwood, Mr. Frank B. Pease, Mr. W. S. Corbin and Mr. Charles O. Loucks, and filed in the office of the clerk of this court their appearance, which appearance is in the words and figures following, to-wit:

United States Circuit Court of Appeals for the Seventh Circuit,
October Term, 1904.

No. 1178.

MARY B. DUN ET AL., Appellants,
vs.
THE LUMBERMEN'S CREDIT ASSOCIATION ET AL.

The Clerk will enter our appearance as Counsel for the Appellees.

FRED H. ATWOOD,
W. S. CORBIN AND
FRANK B. PEASE,
CHAS. O. LOUCKS.

Endorsed: Filed Jun- 6, 1905. Edward M. Holloway, Clerk.

And afterwards, to-wit: On the fifteenth day of June, 1905, in the October term last aforesaid, there was filed in the office of the clerk of this court a stipulation of counsel, which stipulation is in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1904.

No. 1178.

MARY B. DUN, ROBERT DUN DOUGLAS, FRANCIS L. MINTON, and WALTER D. BUCHANAN, Executors and Trustees under the Will of Robert G. Dun, Deceased, Appellants,

vs.

THE LUMBERMEN'S CREDIT ASSOCIATION, WILLIAM CLANCY, and BURTON W. STADDEN, Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

It is hereby stipulated and agreed by and between the parties to the above entitled cause, that the time within which the appellants may file their briefs in the above entitled cause may be extended up to and including the first day of August, A. D. 1905; and that the time within which the appellees may file their briefs in the above entitled cause may be extended up to and including the 20th day of September, A. D. 1905.

HOYNE, O'CONNOR & HOYNE,
FRED H. ATWOOD,
FRANK B. PEASE,
WILLIAM S. CORBIN AND
CHARLES O. LOUCKS,
By ATWOOD, PEASE, CORBIN & LOUCKS, *Att'ys for Appellees.*

Dated, Chicago, June 15, 1905.

Endorsed: Filed Jun- 15, 1905. Edward M. Holloway, Clerk.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held at the United States Court Rooms, in the City of Chicago, in said Seventh Circuit, on the third day of October, 1905, of the October term in the year of our Lord one thousand nine hundred and five and of our Independence the one hundred and thirtieth.

And afterwards, to-wit: On the third day of October, 1905, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

TUESDAY, *October* 3, 1905.

Court met pursuant to adjournment.

Present: Hon. Peter S. Grosscup, Circuit Judge presiding. Hon. Francis E. Baker, Circuit Judge. Hon. William H. Seaman, Circuit Judge.

1178.

MARY B. DUN ET AL., Executors,
vs.
THE LUMBERMEN'S CREDIT ASSOCIATION ET AL.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

It is ordered by the court that this cause be and the same is hereby set down for hearing November 9, 1905.

And afterwards, to-wit: On the ninth day of November, 1905, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

THURSDAY *November* 9, 1906.

Court met pursuant to adjournment.

Present: Hon. Peter S. Grosscup, Circuit Judge presiding. Hon. Francis E. Baker, Circuit Judge. Hon. William H. Seaman, Circuit Judge.

1178.

MARY B. DUN ET AL., Executors,
vs.
THE LUMBERMEN'S CREDIT ASSOCIATION ET AL.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel, and on oral argument by Mr. John O'Connor, counsel for appellants, and by Mr. Frank B. Pease and Mr. Fred H. Atwood, counsel for appellees, and the court having heard the same takes this matter under advisement.

And afterwards, to-wit: On the ninth day of January, 1906, in the October term last aforesaid, there was filed in the office of the clerk of this court the opinion of the court in the above entitled cause, which opinion is in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1905, October Session, 1905.

No. 1178.

MARY B. DUN ET AL., Appellants,
vs.
LUMBERMEN'S CREDIT ASSOCIATION ET AL., Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

Before Grosscup, Baker and Seaman, Circuit Judges.

BAKER, *Circuit Judge*, delivered the opinion of the court:

For nearly half a century appellants have been publishing quarterly a reference book of capital and credit ratings of business men generally. For nearly thirty years appellees have been publishing semi-annually a reference book of capital and habits-of-pay ratings of men engaged in businesses connected with the manufacture, sale or use of lumber.

Appellants' bill for injunction charged that their copyrighted editions of March, July, and September, 1901, were pirated by appellees in preparing their editions of July, 1901, and January, 1902. The Circuit Court dismissed the bill on the ground that purloining was not shown to an extent that would justify an injunction.

Appellees claim that they used the Dun book only to check names to see if there were any persons concerning whom they had not already obtained information by independent investigation, and to compare Dun ratings in about one case in a hundred with their latest information which indicated a marked change from former ratings; and that in every instance the material in their publication was obtained by their own labors in independent investigation. If such was the case, the use was fair. Drone on Copyright, p. 396; Edward Thompson Co. *v.* American Law Book Co., 122 Fed. 922; Dun *v.* International Mercantile Agency, 127 Fed. 173.

The question is one of fact, to be solved by a study of the evidence. From our examination we concur in the conclusion of the Circuit Court. The large features are that appellees' book of about 60,000 names contains over 16,000 (and over 400 towns) that are not in Dun's; that of the names in common only about 15 per cent. have similar capital ratings; that of the names with similar capital ratings a large proportion are classified differently respecting the particular businesses; and that six times as many different classes of information are given in appellees' book as in Dun's. On every page of appellees' book the names that are not given in Dun's and the names

regarding which the information does not exceed or substantially vary from that given in Dun's, bear the relation of three to one. These features are an ocular confirmation of appellees' testimony regarding the long continued, elaborate and comprehensive system of obtaining independent information. It is futile to claim that such a system, producing 25 per cent. more names than Dun, and six times as many subjects of information concerning the persons named, is kept up at great expense merely as a cloak. It may be that the evidence would require a finding that with respect to a few names an improper use of Dun's book was made by an agent or correspondent of appellees. But the proportion is so insignificant compared with the injury from stopping appellees' use of their enormous volume of independently acquired information, that an injunction would be unconscionable. In such cases the copyright owner should be remitted to his remedy at law. Drone on Copyright, p. 413; Mead *v.* West Pub. Co., 80 Fed. 380.

The answer charged that Dun pirated information from appellees. The decree, after finding that appellants had not proved the allegations of their bill, records that the facts set forth in the answer are true. As there was no proof whatever in support of the recited allegation, the finding in the decree that the facts alleged in the answer are true should be excised. And it is so ordered.

The decree as modified is affirmed.

And afterwards, on the same day, to-wit: On the ninth day of January, 1906, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

TUESDAY, *January* 9, 1906.

Court met pursuant to adjournment.

Before Hon. Peter S. Grosscup, Circuit Judge, Hon. Francis E. Baker, Circuit Judge, Hon. William H. Seaman, Circuit Judge.

1178.

MARY B. DUN, ROBERT DUN DOUGLASS, FRANCIS L. MINTON, and WALTER D. BUCHANAN, Executors and Trustees under the Will of Robert G. Dun, Deceased,

vs.

THE LUMBERMEN'S CREDIT ASSOCIATION, WILLIAM CLANCY, and BURTON W. STADDEN.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Northern District of Illinois and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court that the part of the decree of the said circuit court in this cause wherein after finding that appellants had not proved the allegations in their bill, it records that the facts set forth in the answer are true, be and the same is hereby ordered expunged. And it is further ordered, adjudged and decreed that the said decree as modified be and the same is hereby affirmed with costs.

And afterwards, to-wit: On the eighth day of February, 1906, in the October term last aforesaid, came the appellants, by their counsel and filed in the office of the clerk of this court their petition for rehearing.

And afterwards, on the same day, to-wit: On the eighth day of February, in the October term last aforesaid, came the appellants by their counsel, and filed in the office of the clerk of this court acknowledgment of service of petition for rehearing in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit.

Term No. 1178.

MARY B. DUN, ROBERT DUN DOUGLASS, FRANCIS L. MINTON, and WALTER D. BUCHANAN, Executors and Trustees under the Will of Robert G. Dun, Deceased, Appellants,

vs.

THE LUMBERMEN'S CREDIT ASSOCIATION, WILLIAM CLANCY, and BURTON W. STADDEN, Appellees.

Notice.

To Messrs. Atwood, Pease, Corbin and Loucks, Counsel for Appellees.

GENTLEMEN: You are hereby notified that we have this day filed with the Clerk of said Court a Petition for a rehearing in the above entitled cause, and have also filed with said Clerk the affidavits copies of which are embodied in said petition and you are herewith served with a copy of said Petition for rehearing.

Yours,

THOMAS M. HOYNE,
JOHN O'CONNOR,
CHARLES K. OFFIELD,
HENRY S. TOWLE,
CHARLES C. LINTHICUM,
MACLAY HOYNE,
Counsel for Appellant.

Chicago, February 8, 1906.
2—138

Received printed copy of the petition for rehearing referred to in above notice this 8th day of February, A. D. 1906.

ATWOOD, PEASE & LOUCKS,
Counsel for Appellees.

Endorsed: Filed Feb. 8, 1906. Edward M. Holloway, Clerk.

And afterwards, to-wit: On the eighth day of February, 1906, in the October term last aforesaid, came the appellants by their counsel, Mr. Thomas M. Hoyne, Mr. John O'Connor, Mr. Charles K. Offield, Mr. Henry S. Towle, Mr. Charles C. Linthicum and Mr. Maclay Hoyne, and filed in the office of the clerk of this court the affidavits of Harry A. McLain, John O'Connor and Thomas M. Hoyne, which affidavits are in the words and figures following, to-wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, ss:

In the United States Circuit Court of Appeals for the Seventh Circuit.

MARY B. DUN, ROBERT DUN DOUGLASS, FRANCIS L. MINTON, and WALTER D. BUCHANAN, Executors and Trustees under the Will of Robert G. Dun, Deceased, Appellants,

vs.

THE LUMBERMEN'S CREDIT ASSOCIATION, WILLIAM CLANCY, and BURTON W. STADDEN, Appellees.

STATE OF ILLINOIS, *County of Cook, ss:*

Harry A. McLain being first duly sworn, deposes and says: I reside in the City of Chicago, County of Cook and State of Illinois, I was in the employ of the Lumbermen's Credit Association from February or March 1901 continuously until July 1902. While I was so in the employ of the said Lumbermen's Credit Association my principal duties were those of a rater, and as such I worked on the July 1901 and the January 1902 editions of the Lumbermen's Credit Association reference book. That is, as a rater, I made ratings on persons, firms and corporations located in certain states assigned to me to revise for those editions. In the revision of the July 1901 edition Oregon, Washington and other states lying West of the Mississippi River were assigned to me to revise, and in the revision of the January 1902 edition, New Jersey and other states lying east of the Mississippi River were assigned to me to revise. In doing the said revision work I made use of parts of what is known as the red-bound book containing the ratings which were given by R. G. Dun & Company and Bradstreet Company in the last preceding editions of their reference books to the persons, firms and corporations lo-

cated in the states which I was to revise as aforesaid. Keys to the ratings of the said R. G. Dun & Company and the said Bradstreet Company, were furnished to me by the instructions of William Clancy, the president of the said Lumbermen's Credit Association. While doing the said revision work I kept the parts of the said red-bound book embracing the states which I was revising constantly before me for reference, and in nearly every case where I made a rating I referred to the ratings of R. G. Dun & Company and Bradstreet Company as they appeared in the said parts of the said red-bound book, to see how they compared with the ratings indicated by the information in the possession of the Lumbermen's Credit Association. The said parts of the said red-bound book so assigned to me contained many new names taken from the last preceding reference books of the said R. G. Dun & Company and the said Bradstreet Company and not appearing in the last preceding edition of the said Lumbermen's Credit Association's reference book, together with the ratings given to the same by the said R. G. Dun & Company and the said Bradstreet Company, in the last preceding editions of their reference books.

In regard to many of the said new names so taken from the said reference books of the said R. G. Dun & Company and said Bradstreet Company, there was in the possession of the said Lumbermen's Credit Association either no information whatever upon which to base ratings or information so meager and incomplete that it was impossible to base ratings upon it. In such cases, that is, both where the information was incomplete and where there was no information at all I fixed the ratings in the following manner: If the ratings of the said R. G. Dun & Company and Bradstreet Company appearing in the said parts of the said red-bound book so assigned to me, were the same, that is, corresponded in amount, I adopted their rating, but if their ratings did not agree with each other, I sometimes adopted R. G. Dun & Company's rating (as it was the custom of the Lumbermen's Credit Association to give the preference to R. G. Dun & Company's rating rather than Bradstreet Company's rating), but I usually adopted the lower rating, sometimes R. G. Dun & Company's and sometimes Bradstreet Company's, or split the difference between the two by adopting a rating about half way between the two.

In regard to names which appeared in former editions of the Lumbermen's Credit Association's book, the ratings of R. G. Dun & Company and Bradstreet Company appearing in the said red-bound book were in many cases either much higher or much lower than the ratings indicated by the latest information in the possession of the said Lumbermen's Credit Association; in other words, they indicated that a decided change had taken place during the preceding year in the condition of the parties to be rated. In such cases I referred to the past records of the Lumbermen's Credit Association to

see whether they justified the ratings in the last edition of the said Lumbermen's Credit Association's book, and upon making such investigation I found in many instances that the information in the possession of the said Lumbermen's Credit Association did not warrant the ratings appearing in the last edition of said Lumbermen's Credit Association's book, in some cases because it was too meager and in other cases because there was no information at all in the possession of the said Lumbermen's Credit Association relative to the names to be rated. In such cases if the ratings of the said R. G. Dun & Company and the said Bradstreet Company agreed with each other in amount, I split the difference between their ratings and the ratings appearing in the last edition of the said Lumbermen's Credit Association's book, but if the said R. G. Dun & Company and the said Bradstreet Company differed from each other in their ratings I sometimes split the difference between the said R. G. Dun & Company's rating and the rating in the last edition of the said Lumbermen's Credit Association's book, but I usually split the difference between the lower one of the said R. G. Dun & Company's and the said Bradstreet Company's ratings and the rating given in the last edition of the said Lumbermen's Credit Association's book. For instance, the said R. G. Dun & Company and the said Bradstreet Company may have rated a party at $5000, to $10,000, and the correspondent furnishing the latest information to the said Lumbermen's Credit Association might state that the party was worth from $2000, to $3000, without giving details. Upon examining all past information in possession of the said Lumbermen's Credit Association and taking the same in connection with the latest information in the possession of the Lumbermen's Credit Association I might have found that the information was meager and did not go into detail sufficiently to enable me to tell from it if the party's rating ought to be raised above what it was in the last edition of the Lumbermen's Credit Association's book, or not. In such cases I concluded that the correspondent of the Lumbermen's Credit Association was perhaps prejudiced against the party rated or was not fully advised as to his financial condition; and if both R. G. Dun & Company and Bradstreet Company rated the party at from $5000, to $10,000, I split the difference between their rating and the rating appearing in the last edition of the Lumbermen's Credit Association book, but if R. G. Dun & Company's ratings and Bradstreet Company's ratings did not agree with each other, I would either split the difference between R. G. Dun & Company's rating and the rating in the last edition of the Lumbermen's Credit Association's book or would take the lower of the two ratings of R. G. Dun & Company and Bradstreet Company and split the difference between it and the rating in the last edition of the Lumbermen's Credit Association book.

Both William Clancey and Burton W. Stadden knew that I was

using the said red-bound book for the purpose of fixing ratings in the manner aforesaid and other raters including the said William Clancy himself, made the same use of the said red-bound book; that is, of the portions thereof covering the states assigned to them to revise, in fixing ratings for the July 1901 and the January 1902 editions of the said Lumbermen's Credit Association Reference Book.

HARRY A. McLAIN.

Subscribed and sworn to before me this 6th day of February, A. D. 1906.

OTTO G. RYDEN,
Notary Public.

[Seal Otto G. Ryden, Cook County, Ill., Notary Public.]

Endorsed: Filed Feb. 8–1906. Edward M. Holloway, Clerk.

No. 1178.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, ss:

In the United States Circuit Court of Appeals for the Seventh Circuit.

MARY B. DUN, ROBERT DUN DOUGLASS, FRANCIS L. MINTON, and WALTER D. BUCHANAN, Executors and Trustees under the Will of Robert G. Dun, Deceased, Appellants,

vs.

THE LUMBERMEN'S CREDIT ASSOCIATION, WILLIAM CLANCY, and BURTON W. STADDEN, Appellees.

Appeal from Circuit Court of the United States of the Northern District of Illinois, Northern Division.

John O'Connor being duly sworn, deposes and says that on or about the 11th day of December 1905 his partner Thomas M. Hoyne, informed him that Philip C. Howard had called at the office of Hoyne, O'Connor & Hoyne several days before and had intimated to him that if the above case could be reopened and further testimony introduced he might be able to give some help to the complainants. That thereupon on the said 11th day of December 1905 affiant wrote and mailed to the said Howard a letter (addressed to him at Boerne, Texas,) in words and figures as follows:

DEC. 11, 1905.

Dict. J. O'C.

Philip C. Howard, Esq., c/o Dr. Frank Howard, Boerne, Kendall County, Texas.

DEAR SIR: My partner, Mr. Hoyne, has told me that in your recent interview with him you intimated that if the case of R. G. Dun & Co. against Lumbermen's Credit Association could be re-opened for further evidence, you might be able to give us some help. The case could be re-opened only upon special application to the Court, and only upon showing to the court special reasons for re-opening it. Have you any objection to telling us how you could help us if the case was re-opened, so that we may decide whether we could show to the court sufficient reasons for re-opening the case. As we must act promptly if we act at all, a prompt reply will oblige.

Yours very truly, HOYNE, O'CONNOR & HOYNE.

That afterwards to-wit, on or about December 27, 1905 affiant received by mail from the said Howard a reply, in words and figures, as follows:

Copy.

BOERNE, TEXAS, *Dec.* 25, 1905.

Mr. John O'Connor.

DEAR SIR: Regret to say that your letter did not reach me until yesterday. I have been traveling through the state on business, and my father knowing that I would be home before the holidays, and of course not knowing the urgency of your letter, simply held it awaiting my arrival.

In regard to the matter in question, it is a long story and I could tell it in conversation more satisfactorily than I can write. I had expected to return to Chicago shortly after the first, though from present outlook may be detained in this state on business for several months yet. To give you an idea of what I have in mind will go into the matter briefly. You know the circumstances surrounding the witnesses on the defense, and know human nature well enough to know that if the witnesses of defendant company had not been — its actual employ at the time that their testimony would have been nearly free, complete and unbiased sufficiently so perhaps to have altered the aspect of the case most decidedly. It was not so much what was said by the witnesses as what was left unsaid. Every witness for defendant company has admitted more than once to me, and in the presence of others that much that was said was perverted, and more that ought to have been told was left unsaid; further, that if the case was ever opened again and they had the opportunity their stories told would be different in important effect. I have been asked by some of them if their conduct and statements could be excused on the ground of undue influence having been brought to bear. How

positive this influence could be made to appear, however, is uncertain. While some of the witnesses might hold to the same story if they were still in the employ of that company; all save two of the principal witnesses are now out of the company's employ and would not have the same motives to actuate them. Whether they would or could directly contradict former statements without making themselves liable for perjury, you know better than I. H. J. Fuller, A. L. Kueffler, H. A. McLain and myself are out of the company's employ. Fuller is very cautious for fear of incriminating himself, but has expressed regret a score of times at his attitude and statement made at the time, and also expressed the desire that he had the opportunity to go on the witness stand again. Kueffler I have not seen so much of or come in close contact with in recent years, but he has admitted an undue zeal on his own part in a desire to help "the old Man" out, (Mr. C——) and that he did not tell all there was to be told. The defense did not call H. A. McLain to the witness stand, and probably had strong reason for not doing so. If he could be induced to talk freely he could tell a good deal. Your side probably made a mistake in not calling him. With reference to myself, I had not been very long in the employ of the company at the time. I was too doubtless over-zealous, and misled in certain respects; subsequent events and developments have caused me to see things in a different light. Wright while still in the employ of the company is anxious to leave it, and if he were out of the company's employ, would still be a most valuable witness. He never contradicted any statements made in his testimony, although I am told that some effort was made to induce him to revise some of his statements. I feel if the matter is allowed to be closed as it now stands, that it will be a travesty of justice and that your firm will lose, perhaps a well-deserved victory. I have admired the legal fight that you have made, with the odds rather against you owing to the peculiar features connected with the case, and the difficulty in eliciting important evidence.

I don't know whether what I have said will be of any practical benefit to you, but I believe that if the witnesses could be assured that they would not compromise or incriminate themselves, that important evidence might be adduced that would undoubtedly change the aspect of the case.

You will please understand that personally I have no axe to grind. I have no selfish object in making these statements, or no desire to get even with anyone. What I write is from a conscientious desire to see justice done. As you may learn upon inquiry, I left the employ of the company voluntarily and for reasons of my own. If you wish to hear from me further write to me at Houston, Tex., care Geo. W. Graves. This will be my address for about two weeks.

Yours respectfully,

(Signed) P. C. HOWARD.

Affiant further says that since the hearing and determination of said cause in the United States Circuit Court of Appeals affiant has learned of new and additional evidence material to the issues involved in said cause. And that such newly discovered evidence is embodied in the affidavit of Harry A. McLain submitted herewith.

JOHN O'CONNOR.

Subscribed and sworn to before me this 7th day of February A. D. 1906.

[NOTARIAL SEAL.] MARTHA MacDONALD,
Notary Public.

Endorsed: "Filed Feb. 8, 1906. Edward M. Holloway, Clerk."

No. 1178.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, ss:

In the United States Circuit Court of Appeals for the Seventh Circuit.

MARY B. DUN, ROBERT DUN DOUGLASS, FRANCIS L. MINTON, and WALTER D. BUCHANAN, Executors and Trustees under the Will of Robert G. Dun, Deceased, Appellants,

vs.

THE LUMBERMEN'S CREDIT ASSOCIATION, WILLIAM CLANCY, and BURTON W. STADDEN, Appellees.

STATE OF ILLINOIS, *County of Cook, ss:*

Thomas M. Hoyne being first duly sworn, upon oath states that he is one of the solicitors for appellants in the above entitled cause. That on or about the 9th day of December 1905 Philip C. Howard, called at the office of this affiant and desired to talk with this affiant in reference to said case. That he expressed a desire to be recalled as a witness and gave this affiant to understand that if he and some of the other witnesses on behalf of appellees could be recalled, their testimony would be materially different from the testimony which they had given.

Affiant informed said Howard that the case had already been submitted to this court, but as said Howard was about to leave the city this affiant took his address for the purpose of communicating with him thereafter if necessary.

Affiant further says that said Howard came to the office of this affiant voluntarily and that his visit was wholly unexpected, that

affiant had not invited or solicited him to come to affiant's office or to give any information whatever.

Affiant further says that he communicated to Mr. John O'Connor the fact that said Howard had called and told him the substance of conversation between him and the said Howard.

THOS. M. HOYNE.

Subscribed and sworn to before me this 7th day of February, A. D. 1906.

MARTHA MacDONALD,
Notary Public.

[Seal Martha MacDonald, Notary Public, Cook County, Ill.]

Endorsed: Filed Feb. 8-1906 Edward M. Holloway, Clerk.

And afterwards, to-wit: On the twenty-seventh day of February, 1906, in the October term last aforesaid, came the appellees, by their counsel Mr. Fred H. Atwood, Mr. Frank H. Pease and Mr. Charles O. Loucks, and filed in the office of the clerk of this court a motion to strike petition for rehearing from the files.

And afterwards, to-wit: On the first day of March, 1906, in the October term last aforesaid, came the appellants by their counsel Mr. Thomas M. Hoyne, Mr. John O'Connor, Mr. Charles K. Offield, Mr. Henry S. Towle, Mr. Charles C. Linthicum and Mr. Maclay Hoyne, and filed in the office of the clerk of this court their supplemental petition for rehearing.

And afterwards, on the same day, to-wit: On the first day of March, 1906, in the October term last aforesaid, came the appellants by their counsel Mr. Thomas M. Hoyne, Mr. John O'Connor, Mr. Charles K. Offield, Mr. Henry S. Towle, Mr. Charles C. Linthicum and Mr. Maclay Hoyne, and filed in the office of the clerk of this court the affidavits of Mr. John O'Connor and Mr. Philip C. Howard, which affidavits are in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit.

MARY B. DUN, ROBERT DUN DOUGLASS, FRANCIS L. MINTON, and WALTER D. BUCHANAN, Executors and Trustees under the Will of Robert G. Dun, Deceased, Appellants,

vs.

THE LUMBERMEN'S CREDIT ASSOCIATION, WILLIAM CLANCY, and BURTON W. STADDEN, Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

STATE OF ILLINOIS, *County of Cook, ss:*

Affidavit.

Philip C. Howard, being duly sworn deposes and says:

I went into the employ of the Lumbermen's Credit Association in October, 1901, and remained in its employ for several years thereafter. I worked as a rater upon the January, 1902 edition of the said Lumbermen's Credit Association's Reference Book, and I as such rater revised Alabama, Arkansas, Louisiana and other states for the said edition.

What was called a printer's copy consisting of the portion of the last preceding edition of the said Lumbermen's Credit Association's Reference Book covering the states which I was to revise as aforesaid and parts of what was called the Red Bound Book covering the said states which I was to revise as aforesaid, and keys to the ratings of R. G. Dun & Company and Bradstreet Company were furnished to me by William Clancy the president of the said Lumbermen's Credit Association. When the said keys to the ratings of the said R. G. Dun & Company and the said Bradstreet Company were so furnished to me the said Clancy asked me if I was familiar with them. I told him that I was. I had worked for the Mutual Mercantile Agency for about a year and a half before that time, and while working for that concern had become familiar with the keys of R. G. Dun & Company and Bradstreet Company. While working on the revision of the states so assigned to me for the January, 1902, edition of the said Lumbermen's Credit Association as aforesaid, I kept before me constantly the parts of the said Red Bound Book covering the said states which I was revising as aforesaid, and before determining what rating should be given to a name, I referred in nearly every instance to the said Red Bound Book to see what ratings the said R. G. Dun & Company and the said Bradstreet Company had given to the name.

I was in doubt at first just what use to make of R. G. Dun & Company's and Bradstreet Company's ratings appearing in the said Red

Bound Book, and I asked Mr. Clancy if he wasn't afraid to use their ratings as he was using R. G. Dun & Company's and Bradstreet Company's. He laughed and said: "Oh, they can't do anything. They brought a suit against Talcott and failed." Talcott published a Reference Book on the furniture trade and was jointly engaged with Clancy in the publication of the Reference Book now published by the Lumbermen's Credit Association. For several days thereafter, I was in doubt as to the course I was expected to pursue with reference to R. G. Dun & Company's and Bradstreet's Company's ratings, and I asked Clancy several times how I should form my conclusions, as to ratings, and he conveyed to me the idea that I was to make use of all the information given me including the ratings in the said Red Bound Book and draw my own conclusions from the whole.

In doing the said revision work I made the following use of the ratings of the said R. G. Dun & Company and the said Bradstreet Company, as they appeared in the said Red Bound Book, with reference to the names which had appeared in the last preceding edition of the said Lumbermen's Credit Association's Reference Book, that is, its July 1901 edition. If the ratings of the said R. G. Dun & Company and Bradstreet Company agreed or substantially agreed with the rating indicated by the latest information received by the said Lumbermen's Credit Association, I adopted the rating indicated by the information in the possession of the said Lumbermen's Credit Association. In many cases however, where the said Lumbermen's Credit Association either had received no information since the issue of its said July 1901 edition, or the information in its possession was too meagre to base a definite rating upon it, I referred to the said Red Bound Book to ascertain what ratings were given to the names by the said R. G. Dun & Company and Bradstreet Company, and if I found that they agreed, or substantially agreed with the rating given to the said names in the said July 1901 edition, I checked the rating of the said Lumbermen's Credit Association appearing in its said July 1901 edition as shown in the said printer's copy as correct, but in many cases where no information had been received, by the said Lumbermen's Credit Association since the issue of its said July 1901 edition, or the information which had been received by the said Lumbermen's Credit Association since the last issue of its said July 1901 edition was incomplete and insufficient to base a definite rating upon it, and the ratings of the said R. G. Dun & Company and Bradstreet Company appearing in the said Red Bound Book disagreed with each other, but one or the other agreed, or nearly agreed with the rating given by the said Lumbermen's Credit Association in its said July 1901 edition, I checked the rating of the said Lumbermen's Credit Association appearing in its said July 1901 edition as shown by the said printer's copy as correct, if there was not much difference between the ratings of the said R. G. Dun

& Company and the said Bradstreet Company, but in some cases where no information had been received by the said Lumbermen's Credit Association since the issue of its said July 1901 edition or the information in its possession was too meager to base a definite rating upon it, and the ratings of the said R. G. Dun & Company and the said Bradstreet Company appearing in the said Red Bound Book agreed with each other, or there was not much difference between them, and there was quite a difference between the rating of the said Lumbermen's Credit Association appearing in its said July 1901 edition and the ratings of the said R. G. Dun & Company and Bradstreet Company as shown in the said Red Bound Book, I sometimes took the rating of the said R. G. Dun & Company or the said Bradstreet Company, but generally split the difference between the rating of the said Lumbermen's Credit Association appearing in its said July 1901 edition, and the ratings of the said R. G. Dun & Company and the said Bradstreet Company. R. G. Dun & Company and Bradstreet Company generally agreed with each other, or there was not much difference between their ratings but in some cases where there was a wide difference between their ratings and between their ratings and the rating indicated by the latest information in the possession of the Lumbermen's Credit Association I split the difference between the rating indicated by the information in the possession of the Lumbermen's Credit Association and the lower one of the ratings of R. G. Dun & Company and Bradstreet Company. In many cases where there was a wide difference between the rating given by the said Lumbermen's Credit Association in its said July 1901 edition and the ratings of the said R. G. Dun & Company and said Bradstreet Company appearing in the said Red Bound Book and the information received by the said Lumbermen's Credit Association since the issue of its said July 1901 edition was too general and vague to furnish an approximate estimate, I examined the information in the possession of the said Lumbermen's Credit Association and if I decided that the rating given in the said July 1901 edition was too low or too high, and that the said R. G. Dun & Company and Bradstreet Company were more nearly correct I took a rating between the rating given in the said July 1901 edition, and the ratings of the said R. G. Dun & Company and Bradstreet Company with a tendency to lean toward the lower of those two ratings.

In regard to the new names contained in the said Red Bound Book, that is names therein which did not appear in the said July 1901 edition, and which were taken as I understood from the Reference Books of the said R. G. Dun & Company and the said Bradstreet Company, I pursued the following course in rating them.

In cases where the information in the possession of the said Lumbermen's Credit Association was complete, that is, sufficient to indicate a definite rating, I followed the rating indicated by such information unless there was a wide variance between the rating in-

dicated by such information, and the ratings of the said R. G. Dun & Company and Bradstreet Company as shown in the said Red Bound Book, but in many cases where there was much difference between the rating indicated by the information in the possession of the said Lumbermen's Credit Association and the rating of the said R. G. Dun & Company and Bradstreet Company as appearing in the said Red Bound Book, I split the difference between the rating indicated by the information in the possession of the said Lumbermen's Credit Association and the ratings of the said R. G. Dun & Company and Bradstreet Company appearing in the said Red Bound Book, if the said R. G. Dun & Company's and Bradstreet Company's ratings agreed or substantially agreed with each other, but if there was much difference between the ratings of the said R. G. Dun & Company and the said Bradstreet Company I sometimes took the one of them which was nearer to the rating indicated by the information in the possession of the said Lumbermen's Credit Association and sometimes split the difference between the rating indicated by the information in the possession of the said Lumbermen's Credit Association and one or the other of the ratings of the said R. G. Dun & Company and the said Bradstreet Company.

Certain blanks called Town Blanks were sent out by the Lumbermen's Credit Association to its correspondents. New names were put on these blanks with the rating of R. G. Dun & Company or Bradstreet Company converted into the key of the said Lumbermen's Credit Association, and very frequently these blanks were returned with no other information concerning the new names except a check mark after them, and we would use the rating of R. G. Dun & Company or Bradstreet Company appearing in the said blanks and written therein by the said Lumbermen's Credit Association before the same were sent out as the rating to be given to the new names.

I testified in this case on the hearing thereof before Marshall E. Sampsell as special examiner and I made an affidavit which was used in opposition to the motion for a preliminary injunction in this case. So far as my said affidavit and my said testimony are inconsistent with the facts herein stated my said testimony and affidavit did not, and do not state the facts correctly.

P. C. HOWARD.

Subscribed and sworn to before me this 12th day of February, A. D. 1906.

[SEAL.]

OTTO G. RYDEN,
Notary Public.

Endorsed: Filed Mar. 1, 1906. Edward M. Holloway, Clerk.

STATE OF ILLINOIS, *County of Cook, ss:*

In the United States Circuit Court of Appeals for the Seventh Circuit.

No. 1178.

MARY B. DUN, ROBERT DUN DOUGLASS, FRANCIS L. MINTON, and WALTER D. BUCHANAN, Executors and Trustees under the Will of Robert G. Dun, Deceased, Appellants,

vs.

THE LUMBERMEN'S CREDIT ASSOCIATION, WILLIAM CLANCY, and BURTON W. STADDEN, Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

John O'Connor being duly sworn deposes and says that on the twelfth (12th) day of February, 1906, he obtained from P. C. Howard an affidavit in the above entitled cause, which affidavit is herewith presented to the Court; that from the time of receiving from the said Howard the letter dated December Twenty-fifth (25th) A. D. 1905, set forth in the Petition for Rehearing heretofore filed in the above entitled cause, up to the time of obtaining the said affidavit, affiant made diligent effort to obtain said affidavit, but said Howard was absent from the said City of Chicago during the greater part of said time, and affiant was unable to procure said affidavit from him before the said twelfth day of February, 1906. Affiant further states that he believes that the said affidavit of the said Howard is true in substance and in fact.

JOHN O'CONNOR.

Subscribed and sworn to before me this 19th day of February A. D. 1906.

MARTHA M. MACDONALD,
Notary Public.

Endorsed: "Filed Mar. 1–1906. Edward M. Holloway, Clerk."

And afterwards, to-wit: On the twelfth day of March, 1906, in the October term last aforesaid, came the appellees by their counsel Mr. Fred H. Atwood, Mr. Frank B. Pease and Mr. Charles O. Loucks, and filed in the office of the clerk of this court a Motion to Strike Supplemental Petition for Rehearing from the Files.

And afterwards, to-wit: On the tenth day of April, 1906, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

TUESDAY, *April* 10, 1906.

Court met pursuant to adjournment.

Present: Hon. Peter S. Grosscup, Circuit Judge presiding Hon. Francis E. Baker, Circuit Judge. Hon. William H. Seamen, Circuit Judge.

1178.

MARY B. DUN ET AL., Executors, etc.
vs.
LUMBERMEN'S CREDIT ASSOCIATION ET AL.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

It is ordered by the court that the petition for rehearing in this cause be, and the same is hereby denied.

At a regular term of the United States Circuit Court of Appeals begun and held at the United States Court Rooms, in the city of Chicago in said Seventh Circuit on the second day of October, 1906, of the October Term in the year of our Lord one thousand nine hundred and six and of our Independence the one hundred and thirty-first.

And afterwards, to-wit: On the fourth day of October, 1906, in the October term last aforesaid, came the appellants, by their counsel Mr. Thomas M. Hoyne, Mr. John C. O'Connor, Mr. Charles K. Offield, and Mr. Henry S. Towle, and filed in the office of the clerk of this court their petition for appeal to the Supreme Court of the United States, which petition for appeal is in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit.

No. 1178.

MARY B. DUN, ROBERT DUN DOUGLASS, FRANCIS L. MINTON, and WALTER D. BUCHANAN, Executors and Trustees Under the Will of Robert G. Dun, Deceased, Appellants,
vs.
THE LUMBERMEN'S CREDIT ASSOCIATION, WILLIAM CLANCY, and BURTON W. STADDEN, Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

Petition on Appeal.

The above named complainants, the appellants in the above-entitled cause, conceiving themselves aggrieved by the order made

and entered in the above entitled cause on the 9th day of January, A. D., 1906, modifying and affirming the decree of the Circuit Court of the United States for the Northern District of Illinois, Northern Division, do hereby appeal from said order to the Supreme Court of the United States for the reasons specified in the Assignment of Errors, which is filed herewith, and they pray that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said order was made be sent to the Supreme Court of the United States.

THOMAS M. HOYNE.
JOHN C. O'CONNOR.
CHARLES K. OFFIELD.
HENRY S. TOWLE.

CHAS. K. OFFIELD,
THOMAS M. HOYNE,
Of Counsel.

Dated October 2d. 1906.

The foregoing claim of Appeal is allowed dated A. D. 1906.

Endorsed: Filed Oct. 4, 1906. Edward M. Holloway, Clerk.

And afterwards, on the same day, to-wit: On the fourth day of October, 1906, came the appellants by their counsel Mr. Thomas M. Hoyne, Mr. John O'Connor, Mr. Charles K. Offield and Mr. Henry S. Towle, and filed in the office of the clerk of this court their assignment of errors, which assignment of errors, *are* in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit.

No. 1178.

MARY B. DUN, ROBERT DUN DOUGLASS, FRANCIS L. MINTON, and WALTER D. BUCHANAN, Executors and Trustees under the Will of Robert G. Dun, Deceased, Appellants,

vs.

THE LUMBERMEN'S CREDIT ASSOCIATION, WILLIAM CLANCY, and BURTON W. STADDEN, Appellee.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

Assignment of Errors.

And now on the fourth day of October, A. D. 1906, come the complainants, by Thomas M. Hoyne, John O'Connor, Charles K.

Offield, and Henry S. Towle, their solicitors, and say that the order entered in said cause, modifying and affirming the decree of the Circuit Court of the United States for the Northern District of Illinois, is erroneous and against the just rights of said complainants, the appellants, for the following reasons:

1. Because the evidence showed that the defendants made an unfair and unwarranted use of complainants' copyrighted reference books, in compiling their own reference books.

2. Because the evidence showed that defendant used and referred to complainant's copyrighted books not for the purpose of comparison only, but for the purpose of copying therefrom both names and ratings, and furnished such names and ratings to their own correspondents as the basis for reports made by such correspondents to said defendants, and that the names and ratings published in defendant's books were in many instances derived wholly from the said books of complainant, and not from original sources.

3. Because the evidence showed that the system adopted and used by defendants in compiling their said several publications was unwarranted and unlawful in that it involved a secret and surreptitious appropriation of said complainants' copyrighted material, which was changed and disguised to escape detection, but which was in fact the basis and foundation of a material part of defendants said publication.

4. Because the evidence showed that the defendants, in compiling their said publications copied names and ratings from complainants' copyrighted books into a book called the "Red Bound Book" and used this Red Bound Book as the source of information in all cases where they were unable to obtain information from other sources.

5. Because the evidence showed that the defendants in numerous cases copied names and ratings from complainants' copyrighted books on their blanks and revision sheets and sent these blanks and sheets to their correspondents, who in numerous cases returned the said blanks and sheets without any change whatever, and defendants furnished no evidence whatever that such correspondents made any inquiries or investigations whatever of original sources, or that they did not merely check such blanks as correct, and return them to defendants, which complainants insist was the same as if said defendants had copied said names and ratings directly from complainants' said books, and was an unfair and unlawful use of complainants' copyrighted books.

6. Because the evidence showed that in the compiling of the January, 1901, edition of the reference books of the defendant, the Lumbermen's Credit Association, the defendants, and each of them copied and pirated names and ratings from the copyrighted September, 1900, edition of the complainants' reference book.

7. Because the evidence showed that in compiling the July, 1901, edition of the reference book of the defendant, the Lumbermen's

Credit Association, the defendants, and each of them, copied and pirated names and ratings from the copyrighted March, 1901, edition of the complainants' reference book.

8. Because the evidence showed that in compiling the January, 1902, edition of the reference book of the defendant, the Lumbermen's Credit Association, the defendants, and each of them, copied and pirated genuine and fictitious names and ratings from the September, 1901, edition of complainants' reference book.

9. Because the evidence showed that in compiling the January and July, 1901, and the January, 1902, editions of the Reference book of the defendant, the Lumbermen's Credit Association, the defendants, and each of them, made an unlawful use of complainants' copyrighted reference book, by appropriating to their own use a material part of the information contained in the complainants' said books without making any original investigation of their own.

10. Because the evidence showed that material and substantial parts of the January and July, 1901, and January, 1902, editions of the reference books published by the defendant, the Lumbermen's Credit Association, were copied bodily or with only colorable changes from the copyrighted books of the complainants, and that the financial ratings placed opposite the names of a large number of persons and corporations in the Lumbermen's Credit Association books were derived by the defendants, and each of them, from the copyrighted books of the complainants, and not from information obtained by the defendants, or any of them, from original sources, through their own efforts and by their own labor and at their own expense.

11. Because the Circuit Court of Appeals erred in modifying and affirming the said decree of the Circuit Court, and in not reversing said decree, and remanding said cause for further proceedings in the Circuit Court

12. Because the Circuit Court erred in dismissing the bill of Complaint for want of equity.

13. Because the Court of Appeals ought to have reversed the judgment of the Circuit Court with directions to the Circuit Court to enter a decree pursuant to the prayer of the bill.

14. Because the decree of the Circuit Court is contrary *of* the law and the evidence.

15. Because the decree of the Court of Appeals is contrary to the law and the evidence.

16. And said complainants further say that said Circuit Court of Appeals erred in refusing to grant a re-hearing to said complainants, in accordance with the prayer of their petition for a re-hearing, filed herewith, for the reasons therein set forth.

17. And said complainants further say that said Circuit Court of Appeals erred in failing to grant to said complainants leave to make application to the Circuit Court of the United States for the Northern

District of Illinois, for leave to file a supplemental bill, in the nature of a bill of review, or such pleading as might be necessary or proper to bring forward newly discovered evidence, and to have the cause re-heard thereon, in accordance with the prayer of the supplemental petition for re-hearing, filed herein for the reasons therein stated.

Wherefore, the said complainants pray that the said order of the said Circuit Court of Appeals, and of the said Circuit Court, be reversed, and that said Circuit Court of Appeals be directed to enter an order reversing said decree of the Circuit Court, and remanding said cause to the Circuit Court, for further proceedings.

THOMAS M. HOYNE,
JOHN O'CONNOR,
CHARLES K. OFFIELD,
HENRY S. TOWLE,
Solicitors for Complainants.

CHAS. K. OFFIELD,
THOS. M. HOYNE,
Of Counsel.

Endorsed: Filed Oct. 4–1906. Edward M. Holloway, Clerk.

And afterwards, to-wit: On the fourth day of October, 1906, in the October term last aforesaid, there was filed in the office of the clerk of this court the affidavit of Mr. Thomas Hoyne, which affidavit is in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit.

No. 1178.

MARY B. DUN, ROBERT DUN DOUGLASS, FRANCIS L. MINTON, and WALTER D. BUCHANAN, Executors and Trustees under the Will of Robert G. Dun, Deceased, Appellants,

vs.

THE LUMBERMEN'S CREDIT ASSOCIATION, WILLIAM CLANCY, and BURTON W. STADDEN, Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

STATE OF ILLINOIS, *County of Cook, ss:*

Thomas M. Hoyne, being first duly sworn, upon oath says that he is one of the solicitors for the Appellants in the above entitled cause and that the matter in controversy in said cause exceeds the sum of Five Thousand Dollars ($5000.00) besides costs.

THOMAS M. HOYNE.

Subscribed and sworn to before me this 1st day of October, A. D., 1906.

[SEAL.] MARTHA M. MacDONALD,
Notary Public in and for Linn County, State of Illinois.

Endorsed: Filed Oct. 4, 1906. Edward M. Holloway, Clerk.

And afterwards, on the same day, to-wit: On the fourth day of October, 1906, in the October term last aforesaid, there was filed in the office of the clerk of this court an appeal bond, which appeal bond is in the words and figures following, to-wit:

Know all men by these presents, that we, Mary D. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan Executors and trustees under the Will of Robert G. Dun, Deceased, as principals and William A. Douglass as surety, are held and firmly bound unto The Lumbermen's Credit Association, William Clancy and Burton W. Stadden, in the full and just sum of One Thousand Dollars ($1,000.), to be paid to the said The Lumbermen's Credit Association, William Clancy and Burton W. Stadden, their cretain attorneys, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our successors, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 4th day of October, in the Year of our Lord One Thousand Nine Hundred and Six.

Whereas, lately, at a United States Circuit Court of Appeals for the Seventh Circuit, in a suit depending in said Court between Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, executors and trustees un- the Will of Robe-t G. Dun, Deceased, appellants, and The Lumbermen's Credit Association, William Clancy and Burton W. Stadden, appellees, an order or decree was rendered against the said Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the Will of Robert G. Dun, Deceased, modifying and affirming a decree of the Circuit Court of the United States for the Northern District of Illinois, Northern Division, and the said Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the Will of Robert G. Dun, deceased, having obtained an appeal and filed a copy thereof in the Clerk's office of the said Court, to reverse the order and decree of the said United States Circuit Court of Appeals for the Seventh Circuit in the aforesaid suit, and a citation having issued directed to said The Lumbermen's Credit Association, William Clancy and Burton W. Stadden, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington thirty days from and after the date of said citation.

Now therefore, the condition of the above obligation is such that if the said Mary B. Dun, Robert Dun Douglass, Francis L. Minton

and Walter D. Buchanan, Executors and Trustees under the Will of Robert G. Dun, Deceased, shall prosecute said appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

MARY B. DUN,
ROBERT DUN DOUGLASS,
FRANCIS L. MINTON,
WALTER D. BUCHANAN,
Executors and Trustees under the Will of Robert G. Dun, Deceased.

Sealed and delivered in presence of
AMELIE M. GRAHAM.
WILLIAM H. MURRAY.
WILLIAM H. MUSING.
GRACE D. BUCHANAN.
WILLIAM A. DOUGLASS. [SEAL.]

Approved by,
P. S. GROSSCUP,
Presiding Judge of the United States Circuit Court of Appeals for the Seventh Circuit.

Endorsed: Filed Oct. 4, 1906. Edward M. Holloway, Clerk.

And afterwards, on the same day, to-wit: On the fourth day of October, 1906, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

THURSDAY, *October* 4, 1906.

Court met pursuant to adjournment and was opened by proclamation of Crier.

Present: Peter S. Grosscup, Circuit Judge presiding. Hon. Francis E. Baker, Circuit Judge. Hon. William H. Seaman, Circuit Judge.

1178.

MARY B. DUN, ROBERT DUN DOUGLASS, FRANCIS L. MINTON, and WALTER D. BUCHANAN, Executors and Trustees under the Will of Robert G. Dun, Deceased,

vs.

THE LUMBERMEN'S CREDIT ASSOCIATION, WILLIAM CLANCY, and BURTON W. STADDEN.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

On motion of Mr. Thomas M. Hoyne, counsel for appellants, it is now ordered that an appeal to the Supreme Court of the United States in this cause be, and the same is hereby allowed.

United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten and printed pages, numbered from 1 to 49, inclusive, contain a true copy of the papers filed (except briefs of counsel and petition for hearing, motion to strike same from files, supplemental petition for rehearing and motion to strike same from the files), and proceedings had thereon in the United States Circuit Court of Appeals for the Seventh Circuit, in the case of Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the Will of Robert G. Dun, Deceased, *vs.* The Lumbermen's Credit Association, William Clancy and Burton W. Stadden, No. 1178, October Term, 1905, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this twelfth day of October A. D. 1906.

[Seal United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to The Lumbermen's Credit Association, William Clancy and Burton W. Stadden, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the Third day of November, A. D. 1906, pursuant to an appeal filed in the Clerk's office of the United States Circuit Court of Appeals for the Seventh Circuit, wherein Mary B. Dun, Robert Dun Douglass, Francis L. Minton and Walter D. Buchanan, Executors and Trustees under the Will of Robert G. Dun, Deceased, are appellants, and you are appellees, to show cause, if any there be, why the order made and entered by said United States Circuit Court of Appeals modifying and affirming the decree of the Circuit Court of the United States for the Northern District of Illinois, Northern Division, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Peter S. Grosscup, Presiding Judge of the United States Circuit Court of Appeals, for the Seventh Circuit, this fourth day of October in the Year of Our Lord One Thousand Nine Hundred and Six.

P. S. GROSSCUP.

We hereby accept service of the within citation for the said The Lumbermen's Credit Association, William Clancy and Burton W. Stadden.

——— ———,
Solicitors for Said Parties.

STATE OF ILLINOIS, *County of Cook, ss:*

Frank C. Cleveland, being first duly sworn, deposes and says that on the 5th day of October, A. D. 1906, he served the within notice upon the within named appellees, The Lumbermen's Credit Association, William Clancy and Burton W. Stadden, in the following manner: By delivering a true and correct copy of said notice to Charles O. Loucks, of the firm of Atwood, Pease, Corbin & Loucks, solicitors for said appellees, and by mailing a true and correct copy of said notice to William Clancy, President, and a copy to Burton W. Stadden, Secretary, of said Lumbermen's Credit Association, directed to #77 Jackson Boulevard, Chicago, Illinois, having been informed by Frank B. Pease of said firm of Atwood, Pease, Corbin & Loucks, that said William Clancy and said Burton W. Stadden were both absent from the City of Chicago, Illinois.

FRANK C. CLEVELAND.

Subscribed and sworn to before me this 5 day of October, 1906.

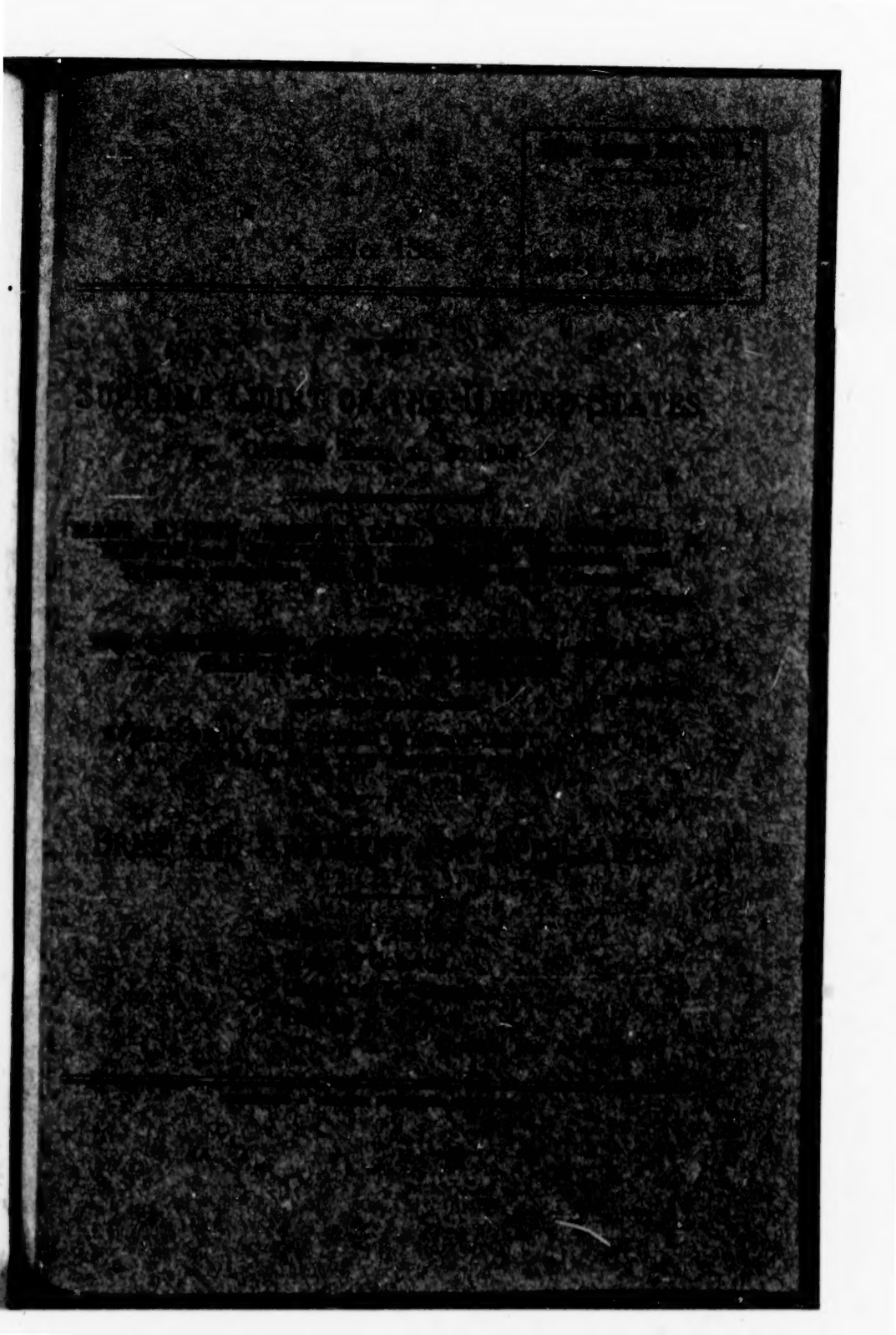
[Seal Martha M. MacDonald, Notary Public, Cook County, Ill.]

MARTHA M. MACDONALD,
Notary Public.

[Endorsed:] No. 1178. United States Circuit Court of Appeals, Seventh Circuit. Mary B. Dun, *et al., vs.* The Lumbermen's Credit Ass'n, *et al.* Citation. Filed Oct. 9, 1906. Edward M. Holloway, Clerk. Hoyne, O'Connor & Hoyne, Attorneys at Law, 108 La Salle Street, Chicago.

[Endorsed:] United States Circuit Court of Appeals for the Seventh Circuit.

Endorsed on cover: File No. 20,429. U. S. circuit court of appeals, 7th circuit. Term No. 138. Mary B. Dun, Robert Dun Douglass, Francis L. Minton, and Walter D. Buchanan, executors and trustees under the will of Robert G. Dun, deceased, appellants, *vs.* The Lumbermen's Credit Association, William Clancy, and Burton W. Stadden. Filed October 22d, 1906. File No. 20,429.



INDEX TO BRIEF OF APPELLANTS.

I.

STATEMENT OF CASE.

		PAGE.
1.	The pleadings.	1
2.	Proceedings in the Circuit Court.	8
3.	Proceedings in the Circuit Court of Appeals.	10
4.	Undisputed facts disclosed by the evidence.	11

II.

ERRORS RELIED ON. 18

III.

BRIEF OF ARGUMENT.

Points of Law.

1. Compiler bound to go to original sources. 20

2. Existence of same errors surest test of copying. 21

3. Defendant must segregate. 21

4. Where material piracy shown plaintiff not required to prove actual damages. 22

5. Complainant having proved infringement entitled to interlocutory decree and accounting. 22

PAGE

6. When part pirated and part original and the court cannot determine how much profits derived from pirated portion defendant must answer for entire profits. 22

7. Party prosecuting legal rights cannot be called to account for motives which prompt him. 23

IV.

ARGUMENT.

1. Compiler of directory bound to do for himself that which was done by first compiler. 24

2. Rule announced in earlier cases not changed by recent cases. 27

3. Existence of same errors one of surest tests of copying. 35

4. If one has incorporated into his own work pirated matter he must segregate it or suffer the consequences. 39

5. Where material piracy shown plaintiff not required to prove actual damages to obtain an injunction. 44

V.

ARGUMENT ON THE FACTS.

1. The test applied by the Circuit Court and Court of Appeals. 46

2. The findings of the court. 61

3. The evidence of piracy. 63

PAGE

4. The intention to pirate. 65

5. The uses made of the Red Bound Books. 71

6. Red Bound Book was itself an infringement. 84

7. The placing of ratings on the revision sheets and sending them to correspondents was an unfair use. 87

8. Evidence of actual appropriation. 98

9. Fictitious Names. 114

10. Names and Ratings not based on information obtained by defendants. 121

VI.

THE COURT OF APPEALS REFUSED TO GRANT LEAVE TO FILE SUPPLEMENTAL BILL. 149

VII.

THE DEFENSE. 155

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1907.

No. 138.

MARY B. DUN, ROBERT DUN DOUGLASS, FRANCIS L. MINTON AND WALTER D. BUCHANAN, EXECUTORS AND TRUSTEES UNDER THE WILL OF ROBERT G. DUN, DECEASED,

Appellants

vs.

THE LUMBERMEN'S CREDIT ASSOCIATION, WILLIAM CLANCY AND BURTON W. STADDEN,

Appellees

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF AND ARGUMENT FOR APPELLANTS.

I.

STATEMENT OF CASE.

1.

The Pleadings.

R. G. Dun & Co., appellants, filed a bill to restrain the infringement of its copyrights, and for an account.

The bill alleges:

1st. The citizenship of the respective parties.

2nd. The nature of the business of the complainants in conducting a mercantile agency, the establishment of this business fifty years ago and succession to and interest of the complainants.

3rd. The publication of a reference book four times a year known as the January, March, July and September editions, the nature and character of this book and the information it contains, the manner in which this information is gathered at an expense of hundreds of thousands of dollars each year.

4th. That in each of the months of March, July and September, 1899, January, March, July and September, 1900, and January, March, July and September, 1901, they published an edition of the said book and duly copyrighted the same.

It sets forth in detail the steps taken to copyright the March, July and September, 1901, editions; that complainants have complied with all the provisions of the statute of the United States, and thereby obtained copyrights of said three books. Copies of these books are deposited in the office of the clerk of the court, and made a part of the bill, as Exhibits 4, 5 and 6.

5th. That the Lumbermen's Credit Association is now and has been for more than eight years last past engaged in printing and publishing a book entitled "The Reference Book of the Lumbermen's Credit Association," which contains names, addresses and ratings of dealers in lumber throughout the United States.

6th. Complainants charge that for many years prior to 1893 the business of printing and publishing the reference books now owned by the Lumbermen's Credit Association had been owned and claimed by William Clancy under the name of the "Lumber Mercantile Association, William Clancy, Acting Manager." That in 1893 said Lumbermen's Credit Association was incorporated with a capital of $50,000, with 500 shares of $100 each; that Clancy has been, and still is, owner of 498 shares, and is president and treasurer. A. C. Clancy, his wife, is the owner of one share, and vice-president, and Stadden is the owner of one share and secretary of said company.

7th. That before the incorporation Clancy published his reference books semi-annually, in January and July of each year, and made up the same wholly or in great part, from information contained in the reference book of the complainant's predecessors and without making any original investigation or inquiries for the information necessary, etc.

8th. The bill charges that after the Lumbermen's Credit Association was formed said company, Clancy and Stadden, continued the practice of pirating from books of the predecessors of the complainants, and that during all the time said Lumbermen's Credit Association has carried on its business it has published its books in January and July, and that it and Clancy and Stadden have made up the same wholly or in great part from information contained in the reference books published by complainants, without making original investigation, and particularly the book of the Lumbermen's Credit Associa-

tion, published in July, 1901, was made up from the March, 1901, edition of the complainant's book.

9th. That the Lumbermen's Credit Association has been engaged in compiling an edition to be issued in January, 1902, now in the hands of the printer, and which within a few days will be ready for delivery unless prevented by order of court.

That the Lumbermen's Credit Association has over 700 subscribers, and unless restrained will deliver books as soon as completed.

That said book was made up wholly or in part from the information contained in the copyrighted March, July and September, 1901, editions of the complainant's book, but more particularly from the September, 1901, edition.

10th. That the said book of complainants and of said Lumbermen's Credit Association use letters and figures indicating the amount of property, capital and limit of credit. The Lumbermen's Credit Association use the same letters and figures to a great extent as complainants, but not to indicate the same amounts.

11th. That defendants, in compiling their July, 1901, edition, copied, in some instances, names of towns, and in other instances names and ratings of persons from the copyrighted March, 1901, book of complainants, and in other instances used the ratings in said copyrighted March, 1901, book, in fixing the ratings in their said July, 1901, book, but instead of copying the same inserted them with slight and colorable changes, for the purpose of concealing the act of pirating, and in other instances in-

tended to copy the ratings and by mistake copied the same letters and figures, thereby unintentionally giving different ratings from those given by complainants.

12th. That defendants in compiling their January, 1902, edition copied names of towns, genuine and fictitious names and ratings, and used the ratings of the September, 1901, edition of complainants.

13th. That complainants have never sold their reference books to patrons, but allowed their temporary use under the agreement to regard the contents as confidential and not permit any other person to make use of them; that defendants having never been subscribers and having been unable to procure said books directly, have for years procured copies, either by collusion with a regular subscriber or by inducing some person to become a subscriber and turn over the book to the defendants for the fraudulent and piratical purposes aforesaid.

14th. That said March, July and September, 1901, editions, and particularly the September, 1901, edition, are supplied to many thousands of patrons in Illinois, and other states, from whom complainants receive large sums, which are necessary to defray the great expense of getting the information and affording a reasonable profit; that said book includes the names and ratings of persons, firms and corporations engaged in many different trades, including the lumber trade; that many of complainant's patrons are largely or solely interested in the lumber trade; that the book of the Lumbermen's Credit Association is intended to compete with the

book of complainants so far as the lumber business is concerned.

15th. That the book of the Lumbermen's Credit Association, now in the hands of the printers and about to be issued, is intended to be distributed and sold in competition with the book of the complainants, and unless restrained defendants will sell and distribute the same throughout the lumber trade of the United States, and thereby cause injury to complainants.

16th. Charges Clancy and Stadden, as president and secretary and assistant manager, as having joined with the Lumbermen's Credit Association in the acts above.

17th. By reason of the aforesaid acts which have only recently come to the knowledge of the complainants, complainants have been deprived of profits, etc., and defendants realized profits, etc., and unless prevented will continue, etc.

18th. Rights of the complainants will be unduly prejudiced unless injunction issued without notice.

19th. Prayer waiving answer under oath for injunction for an accounting, etc. (Rec., 2-14.)

Answer of Lumbermen's Credit Association.

1st. Admits its incorporation.

2nd. Admits business of R. G. Dun & Co.

3rd. Neither admits nor denies allegations as to when business of Dun & Co. was established nor as to method of getting information, nor as to connection of R. G. Dun with business, his death, will and successors.

4th. Admits publication by Dun & Co. of reference book, but denies that information was all obtained from original sources; alleges use of other books, etc.

5th. Neither admits nor denies allegations as to copyrights.

6th. Admits Lumbermen's Credit Association has been engaged in publishing reference books, but denies piracy. Denies in detail allegations of bill as to use of complainant's book.

7th. Admits that they were never subscribers of complainant's book.

8th. Denies that Clancy and Stadden joined in using complainant's book and denies all wrongful acts.

9th. Alleges on information and belief that complainants copied ratings from the January and July, 1901, and previous editions of its book, and that their former editions transferred them into subsequent editions, so that the book issued by complainants in September, 1901, contains a large percentage of references copied from defendant's book, and therefore complainants are not seeking equity with clean hands.

10th. Avers that the names of towns, persons, firms and corporations, letters, characters and symbols in the key used by complainants are not subject of copyright.

11th. Denies that complainants copyrighted the books issued by them in the years 1899, 1900 and 1901, or that they obtained copyrights for said books of March, July and September, 1901, as alleged.

12th. Denies piracy of William Clancy prior to the incorporation of the Lumbermen's Credit Association.

13th. Describes business of defendant established twenty-six years ago, method of collecting information from correspondents, statements, from dealers, travelers, etc., etc., publication of the reference books, revision of same, and what they contain, showing difference between them and complainant's book, and difference in keys.

14th. Denies that complainants are entitled to relief and prays same advantage as if it had demurred to bill. (Rec., 20-32.)

Answer of William Clancy and Burton W. Stadden.

This answer is substantially the same as the answer of the Lumbermen's Credit Association. (Rec., 33-42.)

2.

Proceedings in the Circuit Court.

Upon the filing of their bill and affidavits in support of it, the complainants applied to the court for a preliminary injunction.

The Circuit Court referred this motion to the Master in Chancery for hearing, with directions to take proofs and report. (Rec., 45.)

Subsequently the court appointed Marshall E. Sampsell special examiner, to take testimony in behalf of both parties. (Rec., 70.)

Testimony was taken both before the master and the special examiner, and the case came on for final

hearing in the Circuit Court upon the testimony so taken, together with the depositions of a number of non-resident witnesses.

The Circuit Court found that the complainants had not proved the allegations of their bill, and that the facts set forth in the answers of the defendants were true, and ordered the bill dismissed for want of equity. (Rec., 1023.)

The case was heard by Judge Kohlsaat. In his opinion (Rec., 1021), among other things, he says:

> "On the other hand, a number of instances are disclosed in the evidence which have a strong tendency to establish the charge that defendants have used some of complainants' copyrighted material in making their book. The same mistakes occur in each. In one case, complainants' witness swears to an entirely fictitious item, placed in complainants' book as a test, which was duly appropriated by defendants.
>
> "In regard to a number of items said to be duplicated defendants show original investigation. Still, when all the explanations are considered, it seems to be fairly established that defendants did take some of the items complained of. Generally such *indicia* is held to indicate a substantial theft of copyright property, but taking all the evidence together, I am satisfied that the items selected as tests constitute the bulk of the items taken, and that they are of small moment in comparison with the whole."
>
> * * *
>
> "When we take note of the character of the items alleged to be appropriated on the one hand, and the consequences of granting the injunction prayed for, it would be an unwarrantable use of the power of the court so to do."

3. *Proceedings in Circuit Court of Appeals.*

An appeal from the decree of the Circuit Court to the United States Circuit Court of Appeals for the Seventh Circuit was prayed and allowed. (Rec., 1025.) Errors were assigned and the case presented to and argued in the Court of Appeals. That court affirmed the decree of the Circuit Court, except the finding that the facts set forth in the answers of the defendants were true. In this respect the decree was modified, there being no evidence in the record to sustain the finding.

In the opinion of BAKER, J., it is said:

> "It may be that the evidence would require a finding that with respect to a few names an improper use of Dun's Book was made by an agent or correspondent of appellees. But the proportion is so insignificant compared with the injury from stopping appellants' use of their enormous volume of independently acquired information that the injunction would be unconscionable." (Rec., 1044.)

Appellants filed a petition for a rehearing urging as their reason therefor:

(1.) That the court overlooked or misapprehended the facts as they appear by the record.

(2.) That the court misapprehended the contention of appellants, which was not that appellees' book contained no original matter, or that it did not embrace features and information not contained in appellants' book, but that a material part thereof was derived, not from original sources, but from the copyrighted editions of appellants' book, and that the pirated matter had been so embodied in appel-

lees' book that it could not be segregated, or, if it could be, it could only be done by appellees, who failed to do it.

(3.) That the court misapprehended the evidence as to the specific instances of piracy disclosed by the evidence and the inferences to be drawn from them.

(4.) That since the hearing and determination of the case appellants have learned of new evidence material to the issues, which they believe would materially affect and change the opinion of the court, and for the purpose of showing the character of such evidence appellants submitted with said petition certain affidavits referred to therein.

Appellants subsequently filed a Supplemental Petition for Rehearing, submitting an additional affidavit as to newly discovered evidence, and praying for leave by order of said court for permission to file a supplemental bill in the nature of a bill of review or such pleading as might be proper or necessary to bring forward newly discovered evidence, and to have the case reheard thereon. The Petition for Rehearing was denied.

An appeal to this court was prayed and allowed and errors assigned, which will be referred to hereafter.

4.

Undisputed Facts Disclosed by the Evidence.

The citizenship, nature of business, title of complainants and copyrighting of complainants' book are all clearly established by the evidence and are not seriously disputed.

The business of R. G. Dun & Co. was carried on by Robert G. Dun for more than forty years prior to his death. They were engaged in reporting the standing of merchants, manufacturers and business men in general, throughout the United States, and from this was evolved the general reference books of the complainants. In these books by letters, figures, and other signs, were indicated the credit and financial ratings of business men. The complainants have about 160 branch offices in the United States, covering every important city. They employ in their business from 2,300 to 2,500 employes, and there is no part of the territory of the United States not fully covered by their own traveling representatives from once to twice in each year. The expense of conducting this business is from two and a half to three million dollars a year.

The object and purpose of this great expense is to obtain as reliable information as possible for their reports. The information so obtained is communicated to the customers of the complainants in the shape of detailed information in answer to special inquiries, and the ultimate result of the labor and expense so incurred is embodied in the reference books of the complainants.

In 1901 there were about fifty thousand subscribers to these books, which are issued four times a year—in January, March, July and September, and are copyrighted. They are not sold, but every subscriber signs an agreement that the book is for his own confidential use, and the terms of this agreement are printed on the first page of the books.

The three books of March, July and September, 1901, involved in this suit, were all duly copyrighted.

It is distinctly stated on the outside cover of each book that it is the property of R. G. Dun & Co., each succeeding book being furnished to the patron only upon the surrender of the preceding edition.

The books were printed in R. G. Dun & Co.'s office in New York City. The reason they are published in such rapid succession is that the large number of changes occurring every business day requires it, the average number of changes each day being about 3 000. They cover the lumber trade, as well as all other trades. The number of names in each book is from 1,300,000 to 1,400,000. To indicate the capital rating, a letter is used, and to indicate the credit rating, a figure. There is a key which appears on the first page of the book to explain the meaning of the letters and figures used.

The circulation of these reference books extends beyond this country to England, Germany, France, South Africa, and Australia, and on this continent to Canada, Mexico and Cuba. (Rec., 131-143.)

The Lumbermen's Credit Association is a mercantile agency for the lumber trade. It publishes a reference book in January and July of each year, called the "Reference Book of the Lumbermen's Credit Association."

This association was incorporated in 1893. The stockholders are William Clancy, Burton W. Stadden and Mrs. William Clancy. William Clancy holds all but two shares of the stock. Mr. Stadden and Mrs. Clancy each hold one share. Mr. Clancy is

president and Mr. Stadden secretary of the company.

Before the incorporation, and from 1884 to 1893, William Clancy carried on the business. (Rec., 314-316.)

Although the defendants published two editions of their book each year, one in January and one in July, it appears they did not make a complete revision of the whole book in each edition, but revised only certain states comprising about one-half of the book, in each new edition. (Rec., 323, 465.)

The manner in which the new editions of defendant's book were prepared was as follows:

They took a copy of their last previous edition, cut out the printed pages covering the states about to be revised in the new edition, pasted each of the pages to be revised upon a blank sheet of paper, leaving a wide margin for notes and corrections, and bound these sheets each state separately in a temporary binding. There were two sets of books prepared in this way, one of which is referred to in the evidence as the "Black Bound Book" and one as the "Red Bound Book." The "Black Bound Book" was intended for the printer's copy and was the book upon which were made all changes and to which were transferred all additions or corrections to be embodied in the reference book as finally printed. The other book, or set of books, called the "Red Bound Book," was sent to one Thorbus who, in turn, sent it to one Kelly, who compared it with the reference books of R. G. Dun & Co. and Bradstreet and added to the printed list of names appearing in the "Red Bound Book" any new names of per-

sons, firms or corporations engaged in the lumber or kindred business he could find in the reference books of R. G. Dun & Co. or of Bradstreet. He also added to these names, as well as to all other names appearing in this "Red Bound Book," the figures and letters appearing in Dun's and Bradstreet's books opposite the same names, so that when completed this "Red Bound Book" contained not only the printed names and ratings appearing in the last edition of defendant's book, but also other names not appearing therein, but appearing in Dun's and Bradstreet's books, and also the letters and figures indicating the financial standing and credit given by R. G. Dun & Co. and by Bradstreet to all the names in the "Red Bound Book," both those taken from the last edition of defendant's book and those copied from Dun's and Bradstreet's books.

This "Red Bound Book," when so completed, was returned by Thorbus to the defendants, who placed it on a table in their office for use by their employes engaged in fixing the credit and financial ratings for the new edition of defendant's book, and these employes were given keys to Dun's and Bradstreet's books so as to enable them to understand and interpret the Dun's and Bradstreet's letters and figures which now appeared in the "Red Bound Book."

The defendants were not subscribers to Dun & Co.'s book, and never had been (Rec., 338), but obtained it for the purpose for which it was used indirectly and surreptitiously. After obtaining it they sent it to a binder, who took it apart, separated the parts according to states, and bound these parts with a temporary binding; these parts were then turned

over to Thorbus, who delivered them to Kelly, who *transferred names, letters and figures* from Dun & Co.'s book to the "Red Bound Book" as described.

After this use had been made of Dun & Co.'s book, it was returned to the binder and the book restored to its original condition.

It appears from the evidence that Thorbus was a subscriber for Dun & Co.'s book, and had signed the usual subscriber's contract. (Rec., 487.) Before Thorbus began to do this work, the defendants obtained Dun & Co.'s book from a man named Gamet, who occupied an office in the same building with the defendants. Mr. Clancy declined to state what the arrangement between him and Gamet in regard to obtaining R. G. Dun & Co.'s book was. He also declined to state whether he had obtained their book through one Brady. (Rec., 338.)

The use made of this "Red Bound Book" is one of the matters in controversy in this case. Defendants insist it was used for the purpose of comparison only, but complainants contend that it was the basis of defendant's book; that it was used for the purpose of obtaining names and fixing ratings for defendant's book, and that in many instances names and ratings were taken bodily from it without reference to any other data or source of information.

While it appears defendants had revision blanks which they claim were sent out for information, and had on file in their office reports and information concerning certain persons named in their book, and while they claim to have called for information as to others whose names appeared in the "Red Bound Book," the contention of complainants is that this

book was used not merely for comparison, or as a guide to sources of information, but as the basis and final authority for ratings fixed by defendants, and as the original and only source of information in those cases where they were unable to obtain any information or satisfactory information from other sources; that under this system the revision sheets produced in evidence, or many of them, may never have left defendant's office, there being nothing upon them to indicate that they had ever been sent to or received from the correspondent and there being no sufficient evidence in the record of their having been mailed or received, and that even if defendants sent out revision sheets for information, these sheets contained the ratings taken from this "Red Bound Book," thus furnishing to the correspondent the information obtained from complainant's book; that even if the sheets were returned by correspondents, they came back with information which came originally from complainant's book; that in fact defendants sent to their correspondents the very information they desired to have returned by the correspondents as original information.

This use of appellant's book, they insist, was an unfair and unlawful use of their copyrighted matter, and that appellees are not protected by going through the form of applying to original sources if in truth and in fact the real source and foundation of their information was appellants' work.

II.

ERRORS RELIED UPON.

The assignment of errors states numerous grounds or reasons why the judgment of the Circuit Court of Appeals is erroneous and should be reversed. These may be summarized and condensed as follows:

(1) Because the evidence showed that appellees made an unfair and unwarranted use of appellants' copyrighted reference books. This is the first assignment and is general enough to include the second and third assignments.

(2) The fourth assignment relates to the use of the Red Bound Book for the purpose of transferring into it names and ratings from appellants' reference book.

(3) The fifth assignment relates to the transfer of names and ratings from appellants' books to appellees' revision sheets, and sending such sheets to their correspondents.

(4) The sixth, seventh, eighth, ninth, tenth and eleventh assignments refer more specifically to the pirating from appellants' September, 1900, March, 1901, and September, 1901, copyrighted editions of the reference books by appellees in compiling the January, 1901, July, 1901, and January, 1902, editions of their reference books.

(5) The twelfth, thirteenth, fourteenth and fifteenth assignments assign as error the judgment of the Court of Appeals affirming the decree of the Circuit Court.

(6) The sixteenth assignment of error is that the Court of Appeals refused to grant a rehearing.

(7) The seventeenth assignment of error is that the court refused to grant appellants leave to file a supplemental bill in the nature of a bill of review and a rehearing upon newly discovered evidence. (Rec., 1060-1063.)

We complain of the judgment of the Court of Appeals:

(1) Because it is apparent the court gave undue weight to the fact that the specific instances of piracy proved to be few in comparison to the whole amount of information contained in appellees' books.

(2) Because the court did not give due consideration to the evidence relating to the manner in which the "Red Bound Books" were made up and used by appellees.

(3) Because the court did not condemn the system adopted by appellees in compiling their books, as in itself conclusive evidence of an unfair use of appellants' copyrighted matter.

(4) Because the court did not give the consideration and weight to which it was entitled, to the evidence of the manner in which the revision sheets of appellees were made up and transmitted to their correspondents.

(5) Because the petition for a rehearing and leave to file a supplemental bill in the nature of a bill of review and for a rehearing upon newly discovered evidence was denied.

III.

BRIEF OF ARGUMENT.

Points of Law.

1.

A compiler of a map, guidebook, or directory where there are certain common objects of information which must if described correctly be described in the same words, is bound to do for himself that which was done by the first compiler. He is not entitled to take one word of the information without independently working out the matter for himself, so as to arrive at the same result from the same common sources of information.

Lawrence v. *Dana*, 4 Cliff., 1.

List Publishing Co. v. *Keller*, 30 Fed. Rep., 772.

Kelly v. *Morris*, 1 L. R. Eq., 697.

Morris v. *Ashby*, 7 L. R. Eq., 34.

Morris v. *Wright*, 5 L. R. Ch. Ap., 279.

Banks v. *McDavitt*, 13 Blatch., 163.

Edward Thompson v. *Am. Law Book Co.*, 122 Fed. Rep., 922.

Dun v. *International Mercantile Agency*, 127 Fed. Rep., 173.

Sampson & Murdock Co. v. *Seaver-Radford Co.*, 134 Fed. Rep., 890.

2.

The existence of the same errors in the two publications affords one of the surest tests of copying. The improbability that both compilers would have made the same mistake if both had derived their information from independent sources, suggests such a cogent presumption of copying by the later compiler from the first, that it can be overcome only by clear evidence to the contrary, and the burden of proof is on the defendants to show, if they can, what part of their book, if any, was not copied from complainant's book.

Mawman v. *Tegg*, 2 Russ., 393.

Spiers v. *Brown*, 31 Law T., 16.

Chicago Dollar Directory Co. v. *Chicago Directory Co.*, 66 Fed. R., 977.

West Pub. Co. v. *Lawyer's Co-operative Pub. Co.*, 79 Fed. Rep., 756.

Drone on Copyrights, 428, 515.

Longman v. *Winchester*, 16 Ves., 269.

Bisel Co. v. *Welsh*, 131 Fed. Rep., 564.

3.

Where the evidence shows that the defendant has, to some extent, appropriated the information of plaintiff in compiling his book, then, he must segregate the pirated from the original matter, or court will restrain the publication of the whole of defendant's work.

Chicago Dollar Directory Co. v. *Chicago Directory Co.*, 66 Fed. R., 977.

Troy Directory Printg. & Bk. Bndg. Co. v. *Boyd*, 97 Fed. R., 586.

4.

Where a material piracy is shown, plaintiff will not be required to prove actual damages to maintain his right to an injunction.

Drone on Copyright, 521.

Campbell v. *Scott*, 11 Simons Ch., 39.

Tinsley v. *Lacy*, 32 L. J. Ch. (U. S.), 539.

Read v. *Holliday*, 19 Fed. Rep., 327.

Tishall v. *Lukell*, 53 Fed. R., 499.

5.

Complainant, having proved infringement, is entitled to an interlocutory decree and to an accounting for damages.

Sanborn Map & Pub. Co. v. *Daukin Pub. Co.*, 39 Fed. R., 266.

Belford v. *Scribner*, 144 U. S., 488.

Gast Lithograph & Eng. Co. v. *Falk*, 54 Fed. R., 890; 4 C. C. A., 648; 14 U. S. App., 15.

6.

Where a part of the infringing work is pirated and a part of it is original, and the court cannot determine from the evidence how much of the profits of the work were derived from the pirated portion and how much from the original portion, the defendant must answer for the entire profits.

Callaghan v. *Myers*, 128 U. S., 617.

Belford v. *Scribner*, 144 U. S., 488.

7.

A party prosecuting his legal right in a legal manner cannot be called to account for the motives which prompt him to action.

Dickerman v. *Northern Trust Co.*, 176 U. S., 181, 190.

McMullen v. *Ritchie*, 64 Fed. R., 253, 261.

Toller v. *C. T. V. & G. Ry. Co.*, 67 Fed. R., 166, 177.

Morris v. *Tuthill*, 72 N. Y., 575.

Davis v. *Flagg*, 75 N. J. Eq., 491.

Dering v. *Earl of Winchelsea*, 1 Cox. Ch., 318.

IV.

ARGUMENT.

1.

A compiler of a guidebook, or directory, where there are certain common objects of information, which must, if described correctly, be described in the same way, is bound to do for himself that which was done by the first compiler.

In *Lawrence* v. *Dana*, the courts say, that a compiler "is not entitled to take one word of the information published without independently working out the matter for himself, so as to arrive at the same result from the same common sources of information." And further: "Copying is not confined to literal repetition, but includes also the various modes in which the matter of any publication may be adopted, imitated or transferred with more or less colorable alteration, to disguise the sources from which the material is derived."

In *List Publishing Co.* v. *Keller* the court says that while the defendants could lawfully use the city directory to obtain the correct addresses of the selected parties, or for the purpose of verifying the orthography of the names, yet, "if the defendant has used the list to save himself the trouble of making an independent selection or classification of the persons whose names appear in the social register, although he may have done so only to a very limited

extent, he has infringed the complainant's copyright." And the court also refers to the existence of the same errors in the two publications, which it says affords one of the surest tests of copying, and raises the presumption of copying by the later compiler from the first, which can only be overcome by clear evidence to the contrary.

In that case it appeared that thirty-nine errors had been copied, and upon this evidence the complainant was granted an injunction.

In *Banks* v. *McDivitt*, the court says of the subsequent compiler:

> "He can not use the labor of a previous compiler *animo furandi* and save his own time by copying the results of the previous compiler's study, although the same results could have been attained by independent labor."

And the court concludes from the evidence in that case that,

> "the inference is irresistible that the plaintiff's book was first resorted to for the purpose of saving the time and labor which must otherwise have been spent in an original examination of the report."

In *Morris* v. *Ashby*, the court said:

> "It is plain that it could not be lawful for the defendants simply to cut the slips which they have cut from the plaintiff's directory and insert them in theirs. Can it then be lawful for them to do so because, in addition to doing this, they sent persons with the slips to ascertain their correctness? I say clearly not. Then, again, would their acts be rendered more lawful because they got payment and authority for the insertion of the names from each individual whose name appeared in the slips, and to this I

> again answer, clearly not. The simple upshot of the whole case is that the plaintiff's directory was the source from which they compiled very material parts of theirs, and they had no right so to resort to that source. They had no right to make the results arrived at by the plaintiff the foundation of their work or any material part of it, and this they have done."

In *Kelly* v. *Morris*, Law Reports, 1 Eq., 701-703, Lord Justice GIFFORD said, referring to the statement that the defendant must go to original sources for the information from which to compile his book:

> "This language does not mean that he may not look into the book for the purpose of ascertaining where a particular person lived and for the purpose of ascertaining whether it was worth his while to call upon that person or not, but it means that he may not take that particular slip and show that to the person and get his authority as to putting that very slip in." *Morris* v. *Wright*, Law Reports, 5 Ch., 285.
>
> "No doubt," continued Vice Chancellor GIFFORD, in *Kelly* v. *Morris*, "the expense of procuring information in a legitimate way is very great. The defendant himself has told us so, and also that it was not for some years that he was able to make it pay, but the defendant goes on in his affidavit to propound a most extraordinary doctrine as to the rights of publicity in the names of private residents, who had, as he expressed it, given their names for public use. What he has done has been just to copy the plaintiff's book and then to send out canvassers to see if the information so copied was correct. If the canvassers did not find the occupier of the house at home, or could get no answer from him, then the information copied from plaintiff's book was reprinted bodily as if it was a question for the occupier of the house merely and not for the compiler of the previous direc-

> tory. Further than this, the defendant tells us that he had a number of new agents; that one of them had performed his part of the work carelessly, thus at once showing how easy it would be on the system adopted by the defendant for any negligent agent to send back his list all ticked as if correct without having taken the trouble to make a single inquiry. Law Report, 1 Eq., 702.
>
> Law Reports, 7 Ed., 34, *Morris* v. *Ashby*."

Vice Chancellor GIFFORD, citing *Kelly* v. *Morris*, said:

> "In a case such as this, no one has a right to take the results of the labor and expense incurred by another for the purposes of a rival publication and thereby save himself the expense and labor of working out and arriving at these results by some independent road. If this was not so, there would be practically no copyright of such a work as a directory. *Ibid*, 40."

2.

The rule announced in the earlier cases not changed by the recent cases.

It was claimed by appellees' counsel that the rule laid down by the earlier cases has been relaxed by the later American authorities, but we think the court will see upon examination that the underlying principle is the same, viz.: "That while the prior work may be referred to as a guide to original sources, the later work must be the result of the author's own labor." He cannot save himself the labor of going to original sources of information by appropriating the results of the first author's labors.

This is the general principle stated in Drone on Copyrights, page 396, in which he says:

> "In no case may he save himself the labor and expense of canvassing by copying or otherwise appropriating the result of his predecessor's labor. In all cases he must obtain the information at his own expense and by his own labor, independently of the copyrighted work, which may be used only as a guide."

We beg to refer briefly to some of these later cases:

In *Thompson* v. *American Law Book Co.*, 122 Fed. Rep., 922, the court says:

> "The only act of the defendant which is complained of is this: Lists of all cases bearing upon a given subject, including the cases found in complainant's books, were put in the hands of the editor chosen to develop that subject. The list of complainant's cases contained authorities not found in the digests. The original reports of these cases were examined by the editor, and if the cases were found applicable they were cited in support of his article. If not, they were rejected.
>
> There is no pretext that a word of the complainant's text has been copied. In fact, the defendant's editors were not permitted to open the complainant's books. The list of cases furnished the editor was not copied in the defendant's work, and the only use made of the list was as a guide to the volumes where the cases were reported."

It will be observed how careful the court was to eliminate from the facts anything tending to show any use made of the previous work except as a guide, and to lay stress upon the fact that the defendant went to original sources for his information.

In *Dun* v. *National Mercantile Agency*, 127 Fed. Rep., 173, which was a bill filed by the same parties who are appellants here, and which involved the question of infringement of their reference books of the same character as those involved in this case, the court denied the motion for a preliminary injunction, although it appeared the defendant had made use of complainant's book in preparing its own publication. It does not appear, however, that the defendant did not, after the discovery of the new names in complainant's book, make independent investigation as to their correctness, nor that it was used otherwise than as a guide to original sources.

The complainant, however, complained that the defendant did more than this. The court says:

> "The complainant, however, insists that his book has been used by defendant for the purpose of appropriating ratings, instead of determining such rating from independent investigations. Upon this branch of the case the testimony is not undisputed. It is shown that some of the affiants have made, under oath, statements so inconsistent with those they now swear to that great caution should be used in accepting any part of their narratives. Other statements made in the moving affidavits are denied in defendant's affidavits, and the case is one which apparently cannot fairly be decided upon *ex parte* affidavits, the conflicting affiants should be cross-examined. It is not unusual in such cases to send the motion to a master to take testimony; but nothing would be gained thereby in this case. The testimony which would be produced before the master is the very same testimony which would be produced on final hearing, and it would consume as much time to take it in either way. Moreover, the question had best be decided at a hearing where both sides have equal chance to appeal."

It will be seen from this, that the court was clearly of the opinion that if it should appear from the evidence that the defendant had used complainant's book, not merely as a guide to original sources, but for the purpose of appropriating the financial ratings attached to the names, the defendant would be held guilty of an infringement. The ratings were the most important results of the time, labor and expense incurred by the complainants to produce their book, and these results the defendant could not lawfully appropriate.

In *Sampson & Murdock Co. v. Seaver, Radford Co.*, 134 Fed. Rep., 890, the Circuit Court held that the compiler of a general directory has the right to take an old directory and be guided by it to original sources of information, and if he obtains facts, even if they consist of names and addresses which are identical with those published in the old directory, he may publish them.

The court held that the action of the compiler of the new directory amounts to something more than mere verification. As the later directory is supposed to state facts as they existed at a later date, the view of the court was:

> "The compiler of the July directory is not merely verifying and quoting, but is obtaining facts from original sources, using the old directory only to guide him to these sources. Facts so obtained, he may publish in his compilation. He cannot be prevented from such publication by the fact that the same things were true in January, and were stated by a former compiler."

But this case was reversed by the Circuit Court of Appeals for the First District. See:

Sampson & Murdock Co. v. Seaver-Radford Co., 140 Fed. Rep., 539.

The Court of Appeals does not approve of the rule adopted by the Circuit Court. In his opinion, Justice PUTNAM says:

> "What the respondent has done is clearly a re-publication of the complainant's copyrighted matter. With reference to each name, the arrangement of the words were primarily taken from the complainant's directory and they were re-published in the respondent's directory. It is true that the words thus taken from the complainant's directory, having been 'slipped,' as it were, passed through the hands of canvassers, but this was not original work. It was only a verification of what was found in the complainant's directory, so that this identical work only completes and makes certain the connecting link between the two publications."

The court further says that the suggestion of the judge of the Circuit Court that each of the two directories has a different outlook in having a different date of publication, does not seem to have received any support from any of the decided cases, and, proceeding, says:

> "Certainly, the injury which such re-publications inflict on the owners of copyrighted directories and the undermining of the markets of the original publishers arising therefrom, if permitted, may be so serious that it is impossible to assume that the use to which the respondent put the complainant's publication in the manner we have expressed, is within any implied consent, such as we have said attaches with regard to copyrighted matter."

Again, the court says:

> "The proper purpose of the usual alphabetical directory is to afford a searcher information of the residence, occupation and other details of the particular person whom he desires to investigate. It cannot be said that it is within the proper purpose of such a work that anyone should use it for correcting his own book of like character in a general way."

Thus, the court condemns the system adopted by the respondent, of taking the slips from the complainant's directory and sending them out for verification at the several addresses which they contain, and then transferring to its own book the information so verified or corrected.

The Circuit Court had directed that an injunction issue against the defendants restraining them from using or selling any copy of their directory so long as it contained certain names, among them certain fictitious names, which were found by the master to have been appropriated from the complainant's book.

The Court of Appeals, in reversing and remanding the case, was clearly of the opinion that the injunction of the Circuit Court should go further and restrain the sale of respondent's books.

The complainant claimed that there were about 20,000 names made use of in the manner stated, and that so far as these names were concerned, the printing constituted an infringement, and the Court of Appeals seems to be of this opinion. The injunction, therefore, to be issued would naturally require the expunging of these 20,000 names or an injunction restraining the publication of the whole book.

This case is particularly applicable to the case at bar, because what we complain of is that appellees took both names and ratings from appellants' books and transferred them to the Red-Bound Book, and from that book onto their Revision sheets, which were sent out to their correspondents for reports. These might be in all cases, and were in many, returned with simply a check mark indicating their correctness. It might be that they were verified as correct, or it might be, as was demonstrated in some cases, that they were returned without any investigation whatever. It was a system that in itself was injurious to appellants and which appellees had no right to use. It was an unfair use of appellants' books.

This case also is interesting and instructive in that it makes a distinction between that class of publications which relate to the arts and sciences, or progressive subjects, and those that are for temporary use only. In the former class of publications in the interest of the arts and sciences and to promote the progress and development of such works as tend to advance civilization, the authorities hold that there is an implied consent by the first publisher that subsequent authors may commence where the prior author stopped, and may, therefore, make use of what precedes them, even in the precise form in which it was last exhibited. But the court says that the authorities pertaining to this class of authors are not close enough to the case under consideration to answer as precedents.

The reason of the rule fails, and, therefore, the rule does not apply to such works as directories and

commercial reference books. What would be a "fair use" of a work treating of one of the arts or sciences, under the authorities referred to, might be an unfair use of a directory or work of that character.

This is an important distinction in the case at bar. There was no implied consent by appellants that appellees should use their books; on the contrary, their use was expressly limited to subscribers by written contracts. Appellees did not use them to advance or develop any useful art or science. The purpose was simply and entirely commercial. They were engaged in producing a book for temporary use only and one which, from its very nature, was intended to supplant the books of appellants in a large class of their subscribers.

There is no good reason why, in a case like this, the rule as to "fair use" should be extended and liberalized. On the contrary, the inherent difficulties in detecting and preventing unfair use in works of this character are so great, and the temptation to make an unfair use is so strong, that there is every reason why the rule that prohibits the second compiler from appropriating the fruits of the time and labor of the first compiler should be strong and rigid.

It must follow from all these cases that the second compiler must proceed fairly and honestly to ascertain the facts. While he may have the assistance of the early work in directing him to sources of information, he must himself work out the result. If it appears that he has not acted honestly and fairly, but has proceeded in form only to seek in-

formation, and has, in fact, made no honest investigation, but has taken and relied upon the results of the labor of his predecessor, then he is not protected. In other words, the court will not protect one who relies upon a formal compliance with the law to conceal a wrong done to another. This principle applies as well to copyrights as to other property rights. The life of the law is its spirit, and the intent and purpose of the copyright statutes is to protect the publisher against the appropriation of the fruits of his labor, whether such appropriation be made directly and openly or indirectly and surreptitiously.

3.

The existence of the same errors in the two publications is one of the surest tests of copying.

Common errors taken in connection with evidence as to the plan of procedure justifies the court in finding, notwithstanding the testimony of defendants and other employees to the contrary, that defendants appropriated the labor of complainants and the whole of defendants' work should be enjoined.

In the case of *Chicago Dollar Directory Co.* v. *Chicago Directory Co.*, the defendants compiled a business directory of the City of Chicago, containing 60,000 names. It appeared that sixty-seven errors in the annual business directory of complainants were followed in defendant's directory, and notwithstanding that defendant's canvassers testified that they made a personal canvass and obtained the

names from original sources, the court granted an injunction against the whole of defendant's book.

The case of *West Publishing Co.* v. *Lawyer's Co-operative Publishing Co.*, is a case that comes very near in its facts to the case at bar. In that case the court discusses fully the facts and considers the evidence of the methods adopted by the defendants in making up their book, and from the evidence of copying in certain instances, taken in connection with the evidence as to the plan of procedure, comes to the conclusion, notwithstanding the testimony of the defendants' employees to the contrary, that the defendant, in compiling its books, appropriated the labor of the complainant, and the whole of defendant's work was enjoined.

Judge LACOMB, delivered the opinion of the court, and, among other things, says:

> "Unfair use may be made of another's copyrighted paragraph and no trace left of such use in the resulting paragraph. We should, therefore, not feel constrained to the conclusion that infringement can be shown only where the two paragraphs disclose suggestive verbal identities."

It appears in that case that the defendant placed in the hands of its editors several pamphlet issues of complainant's reporters, with no attempt to eliminate the copyrighted head notes. The court says:

> "It would not be surprising to find that one or more of them yielded sometimes to this temptation, and it would certainly seem that defendant's officers should have contemplated that possibility and provided against it."

While the court concedes the right of the defendants to put complainant's pamphlets into the hands of its editors, yet it says:

> "But if it failed to take precautions against improper use of them, and in consequence might be unable when challenged with a *prima facie* case of unfair use either to overcome the *prima facie* case or to segregate the work of the unfair users from that of the fair users, it would have its own officers to thank for that result. Ordinary intelligence would surely have contemplated the possibility of the very contingency which complainant asserts has happened."

Although the court finds that only a fraction of the forty-four cases in the exhibit bear on their face conclusive evidence of piracy, yet declares it is impossible to escape the conviction that the digester of the pamphlet No. 12 systematically made an unfair use of the head notes he found therein, unless the court was prepared to assume that through some mysterious and unconscious process of selection he was so unfortunate as to turn for help to complainant's syllabi only in those cases where existing errors made the use of such syllabi particularly dangerous, and notwithstanding a denial by all of the defendant's editors that they made any use at all of the complainant's syllabi in the preparation of their digest, the court, in view of the evidence that so many paragraphs contained internal evidence of piracy, holds that a mere general denial of the writer would have no weight.

The court finds, therefore, that nearly 6,000 cases published in complainant's pamphlets with syllabi and foot notes were digested by persons in the em-

ploy of the defendants, who repeatedly and systematically made an unfair use of the copyrighted work in order to save themselves the time and labor of original investigation. They endeavored, so far as practicable, to conceal the fact that such unfair use had been made, sometimes successfully, sometimes not, and in consequence it was not practicable to determine without evidence, which they did not offer, in which cases an unfair use had been successfully concealed and in which no unfair use was, in fact, made. In such condition of affairs, as by the misconduct of the defendant's employes, a part of the complainant's copyrighted work had been appropriated by the defendant, and so mingled with original matter contained in defendant's publication that no one except its own employes, who did the wrong, could segregate the pirated from the original matter, and as they did not make such segregation, the whole work, or so much of it as was tainted by the workmanship of the unfair users, it was held, should be enjoined and accounted for.

In that case, out of 38,000 paragraphs, the proof showed only 303 instances of piracy, and yet the court held complainants were entitled to an injunction restraining the publication of the whole work.

And, in *List Publishing Co. v. Keller*, 30 Fed. Reporter, 772, cited by Judge Lacomb in the above case, where out of 2,800 names only 39 errors were shown to have been copied, and there was no evidence of piracy as to the others, except the presumption arising from the errors copied, the whole work was enjoined.

In the case of *Bisel* v. *Welsh*, 131 Fed. Rep., 564, where defendants published a digest of the laws of Pennsylvania, which contained eleven errors, consisting of incorrect citations, which appeared *verbatim* in complainants' copyrighted work, it was claimed that these errors were accidental. The court says:

> "Notwithstanding, however, the explanations offered in this preliminary motion I am not satisfied that Mr. Brightly did not make an unfair use of the complainants' Supplements of 1895 and 1897. In a case like this where the same kind of a digest is to be compiled from the same material by the same man, similarly arranged, the existence of the same errors in the two digests offers one of the surest tests of copying. The improbability that the same mistakes would have been made even by the same author, in both volumes, compiled five and six years apart, if in both instances he had done the original work, suggests such a cogent presumption of copying from the former into the latter digest that it can only be overcome by clear evidence to the contrary."

So, in *Callaghan* v. *Myers*, 128 U. S., the court declared that one of the most significant evidences of copying was the copying of errors.

4.

If one has unlawfully incorporated into his own work pirated matter, he must segregate it or suffer the consequences.

Where, as in this case, the defendants have appropriated parts of the complainant's copyrighted matter, and have so mingled it with their own work that they are unable to separate it, then, under the au-

thorities cited, their whole work must be enjoined. It is no defense to say that the original documents are lost or destroyed, for, as said in *Troy Directory Printing & Book Binding Co.* v. *Boyd*, 97 Fed. R., 586, when it is borne in mind that the defendant has had large experience in the production of such books and that he must have anticipated competition with complainant's work in a suit of this character, it is most extraordinary that he should not have preserved records sufficient to enable him to determine as to any particular list of names, the identity of the canvasser or canvassers who reported them. In other words, the burden is cast upon the defendants to segregate that part of the work which was copied from complainant's work, if they can do so, and if they cannot do so, they must take the consequences.

Nor will it do for the defendants to say that if its employes, or some of them, made an unlawful use of complainant's book, it was without the authority of the defendants, and against their instructions. In the case last referred to the court, concerning this question, said:

> "Of course, for their acts the defendant is responsible, whatever instructions he may have given."

The principles we have stated are the same as those announced in the case of *Callaghan* v. *Myers*, 128 U. S., 617, involving a copyright of certain of the Illinois reports. While the written opinions of the court were not the subject of copyright, they formed an essential part of both the copyrighted and the infringing books. The head notes and syllabi were covered by the copyright, and the fact that

these volumes contained so much valuable matter not covered by the copyright did not preclude the court from finding the defendants guilty of piracy and of holding them liable for profits on the whole work.

The court says (p. 665):

> "If the volume contains matter to which a copyright could not properly extend, incorporated with matter proper to be covered by a copyright, the two necessarily going together when the volume is sold as a unit, and it being impossible to separate the profits of the one from the profits of the other, and the lawful matter being useless without the unlawful, it is the defendants who are responsible for having blended the lawful with the unlawful, and they must abide the consequences on the same principle that he who has wrongfully produced a confusion of goods must alone suffer."

Again, the court says (p. 660):

> "That it was competent for an editor to take the opinions of the Supreme Court, and possibly from the volume of Mr. Freeman, and make an independent work, but it is always attended with great risk for a person to sit down and with the copyrighted volumes of law reports before him, undertake to make an independent report of a case. It is not difficult to do this going to original sources of information, to the decisions of the court, the briefs of counsel, the records on file in the clerk's office, without regard to the regular volumes of reports. Anyone who has tried it, can easily understand the difference between the head notes of two persons, equally good lawyers and equally critical in the examination of information, where they are made up independent of each other, and bearing in mind this fact, it seems to be beyond controversy that although in many and perhaps

> most instances there is a very considerable difference between the head notes of the defendant's volumes and those of the plaintiff, the latter have been freely used in the preparation of the former."

This language from the opinion of Judge Drummond in the Circuit Court, is concurred in by Justice Blatchford, who rendered the opinion of this court.

And again, in *Belford* v. *Scribner*, 144 U. S., 489, this court held:

> "That although only a portion of the copyrighted work be copied in the infringement, if such portion be so intermingled with the rest of the piratical work that it cannot well be distinguished from it, the entire profits realized by the defendants will be given to the plaintiffs."

In the case at bar the Court of Appeals considered the pirated matter so inconsiderable in quantity or value and as forming so small a part of appellees' publication as to be insignificant, and declared that it caused little or no damage to appellants, while the consequences of an injunction would be so serious to appellees that the court ought not to grant it.

Whether or not the court was in error in this, depends upon the facts. If appellants have proved, as they claim to have done, that a material and valuable part of their copyrighted matter has been unlawfully appropriated, it does not excuse appellees to say, that in addition to this material part of appellants' matter, they have embodied in their own books much other valuable matter not contained in appellants' books. This may frequently happen, as

in the two cases just cited. We think the Court of Appeals was in error in comparing the number of specific cases of piracy proven and conceded by the court to have been proven with the whole mass of material contained in appellees' books. The question is not whether the pirated material forms a large or substantial part of the infringing book, or whether it is a material part of that book, but the important question is, was the part taken a material part of the *copyrighted book?* It might be the most valuable and material part of the copyrighted book and yet form a comparatively small part of the infringing book.

It cannot be doubted that the financial ratings in Dun & Co.'s book were a material part thereof. They were the material part of it. They were the product of intellectual labor. Nor can it be denied that the financial ratings were a material part of appellees' book.

If appellees appropriated these ratings or a material part of them, they were guilty of piracy, even though they may have used and worked this material into a mass of miscellaneous and useful information not derived from appellants' books or embraced in them.

If this pirated matter was so used and separated from the remainder of appellees' matter that it could be pointed out and defined, the court would enjoin the publication of that part only of appellees' book, but if it is so interwoven with other materials that it cannot be separated, then under the authorities cited, as it was through the misconduct of

appellees that this intermixture took place, they must suffer the consequences.

It is not, however, the number of instances where piracy is positively proved that controls, but it is these instances, taken in connection with the circumstances which point to an unfair use of the copyrighted work, and the court in a case like this must take into consideration all the circumstances which tend to show a disposition in the defendants to appropriate the work of the complainant, and must recognize the fact that if the defendants intended to make a wrongful use of complainant's work, knowing that it had no right to do so, they would, as far as possible, cover up and conceal their infringement by the adoption of every means possible. It is, therefore, important in considering the evidence in this case to consider the method adopted by defendants in compiling their own work, the manner in which they used the complainant's book, and the evidence of a purpose and disposition to appropriate the work of the complainants.

5.

When a material piracy is shown, plaintiff will not be required to prove actual damages to maintain his right to an injunction.

If, as appellants claim, there was a material piracy shown, it was not necessary for them to show any actual damages to maintain their right to an injunction.

This rule is established by the authorities cited under our 4th point. It is a reasonable rule, because

the court can see in such cases that an injury has been done by the wrongful act of appellees, and it is not for them to say that appellants must prove their actual damages. The damages in such cases are of such an insidious, gradual and continuous character, that it might be difficult for the author of the first publication to furnish at the outset direct and positive evidence. The fact that the second compilation is in competition with the first and is intended to supplant it, makes it evident that the first publisher has sustained and must sustain damages, and the court will so assume.

V.

ARGUMENT ON THE FACTS.

1.

The test applied by the Circuit Court and Court of Appeals.

The Court of Appeals, as well as the Circuit Court, based its findings mainly upon the fact that the specific instances of piracy shown by the evidence were so few in number as compared with the whole number of names in the appellees' books, that they were insignificant "compared with the injury from stopping appellees' use of their enormous volume of independently acquired information."

These specific cases were so clearly demonstrated to be acts of piracy, that both the Circuit Court and the Court of Appeals concede them to be established by the evidence. It is admitted, therefore, by both of the courts below that appellees were guilty of an unlawful appropriation of a part of appellants' copyrighted books, but the Court of Appeals, comparing the number of conceded cases with the whole volume of information contained in appellees' book, concludes from such comparison that the appellants were not entitled to the relief prayed.

This is not a fair test: First, because if appellees were guilty of piracy in the first instance, it is immaterial how much additional information they may have added to the pirated matter. This prin-

ciple was clearly expressed by Mr. Justice Clifford in *Lawrence* v. *Dana*, above cited, and this is the principle announced in Drone on Copyrights, p. 405, which he illustrates by stating that it is not lawful to reprint a copyrighted article in a cyclopedia, "though such article be but one of a thousand in the cyclopedia," citing *Roworth* v. *Wilkes*, 1 Camp., 94.

The comparison, if one was to be made, should not have been between the cases of piracy conceded to be such, and the whole mass of material comprised in appellees' book, but the inquiry should have been, what relation does the pirated matter bear to appellants' books? Was it a material part of appellants' copyright? In determining this question, it is not a question of numerical proportion or a comparison as to quantity. The test applied by Story, J., in *Folsom* v. *March*, 2 Story, 115, is, the value of the material taken and the importance of it to the sale of the original work.

Drone (p. 413) states the rule:

> "The authorities agree that where the quantity taken is material, and enough to cause substantial injury to the author entitled to protection, a case of infringement may be made out."

Another principle applicable to the case is that stated by Drone (p. 414):

> "It should be remembered, however, that when the fact of copying or borrowing has been established, and cannot be defended on the principle of fair use, the original author is usually in the right, and the other in the wrong. The former is entitled to the full enjoyment of the fruits of his labor; the latter in seeking gain is bound to depend on his own honest resources. Hence, in determining what amount or what

> value is sufficient to constitute infringement in cases of this kind, the utmost rigor consistent with right and justice should find place against him charged with wrong."

Second. The test applied by the court was not a fair one, because the court assumes that the cases of piracy proven were few in number, evidently confining itself to certain specific instances which were conclusively shown by the evidence to be piratical, whereas, appellants were entitled to the benefit of the conclusion from the copying of errors and fictitious names, that other names and ratings which were the same in both books were also copied from appellants even though no errors appeared in them.

This is the principle announced by Lord Eldon in *Maxman* v. *Tegg*, and followed in later authorities, and the presumption is both just and reasonable. If the court had observed this rule, it must have found from the evidence not few but many names and ratings copied from appellants' books.

Third. We contend that the court below did not give to these conceded cases the weight they were entitled to, and did not consider in connection with them the other evidence in the case.

Appellees were charged with the serious offense of deliberately and persistently using appellants' copyrighted books as a source of information. This charge they denied.

To fully appreciate the force and effect of these specific instances of unlawful use of copyrighted matter, it is necessary to understand the circumstances under which this evidence was obtained.

It was charged in the bill, and upon the hearing, that appellees had been guilty of pirating from appellants' copyrighted books for several years and that this piracy had been extensive and systematic.

This they denied in their answer and upon the witness stand and their employes, called as witnesses, as strenuously denied that in any case they used or referred to appellants' books except for comparison or out of mere curiosity.

If, as charged, appellees were unlawfully appropriating appellants' matter, it is certain they were well aware of the consequences of so doing, and that they would, therefore, resort to every means possible to conceal the evidences of such appropriation. It follows, therefore, that although appellants may have had good reason to believe that appellees were guilty of the most extensive piracies, it would be difficult to obtain direct and positive evidence of it in every instance.

When honest, reputable business men are accused of dishonest and disreputable methods in the transaction of their business, they are ready and anxious to submit to any examination of their affairs that may be demanded by one who makes the charge.

Appellants, as they had the right to do, sought to produce evidence of the piracy by an examination of the books and papers in the possession of appellees. These ought to have been produced willingly and promptly, but appellees resisted the production of these books and papers, and attempted to limit the examination of them.

It was a physical impossibility for appellants'

counsel to examine all the papers and documents in the possession of appellees, and from which they professed to obtain the information contained in their books, but there ought to have been no objection on the part of appellees to the examination by appellants of as many of these papers and documents as they saw fit to examine. If the claim of appellees that their books were made up from wholly original sources, and that they had in their possession the data showing their investigation of original sources, was true, then the more extensive the examination made of this data by appellants the more complete would be the vindication of appellees if appellants failed, but if appellees sought to obstruct, prevent and limit the investigation it subjects them to the natural suspicion that they had reason to fear that by such examination appellants would discover evidence to sustain the charges made. And this proved to be so, for the conceded cases of piracy were discovered by this investigation.

William Clancy, president of the Lumbermens' Credit Association, was examined as a witness by appellants before the master in chancery. He had been subpoenaed to produce the "Red-Bound Books" and the "Black Bound Books," made up by the association between June, 1900, and January 27, 1902. Upon the advice of counsel he refused to produce them, as also other information called for. Counsel based his advice upon the ground that the information called for was confidential and privileged communications. (Rec., 316.) The information called for related to seventy-five names.

The master overruled this objection and directed the books to be produced. (Rec., 317.)

The books and information relating to the seventy-five names then under consideration were produced at the next session before the master, but counsel insisted that their use be limited to the names referred to. The master declined to make any limitation. (Rec., 319.) The witness then produced the "Red-Bound Books" and the "Black-Bound Books" only so far as they related to the January, 1902 edition. (Rec., 320.) Counsel instructed the witness not to produce the books except with the limitation stated, and with the distinct understanding that no other use should be made of them. (Rec., 321.) The master directed the witness to produce the books. (Rec., 321.)

The witness was then examined as to the books which had been produced. His counsel objected to the inquiry as to what reference books the information appearing in the "Red-Bound Books" was taken from, except so far as it might refer to appellants' books, and instructed the witness not to answer except so far as might refer to appellants' reference books. (Rec., 326.) His counsel objected to any use of these books further than for the purpose of referring to the names mentioned in the list referred to in an affidavit (being seventy-five in number), and instructed the witness not to answer the question whether any reference books were used by one Thorbus in his work on the "Red-Bound Books" (Rec., 327), and the witness, on the advice of counsel, refused to answer this question as he did several others relating to the same subject. He refused to

answer as to the sources from which Thorbus obtained certain letters and figures. He refused to answer as to what other agencies he referred in his affidavit filed in the case in which he had stated that new names and ratings of other agencies appeared in the "Red-Bound Book." (Rec., 328.) He refused to answer the question as to the meaning of two crosses opposite certain names. (Rec., 332.) He refused to answer where the Lumbermens' Credit Association obtained appellants' book for the purpose of transferring ratings from it to the "Red Bound Book," and whether he did not obtain the book from one Albert E. Gamet, under an arrangement with him by which he was to subscribe for it and give witness the use of it, the witness to pay the whole or part of the subscription. (Rec., 338-339.) And under the like advice of counsel, he declined to answer whether he ever procured the reference books of appellants from D. L. Brady for the purpose of obtaining information from them. (Rec., 339.)

Subsequently appellants' counsel called for the papers relating to fifteen or twenty names in addition to the seventy-five previously referred to. (Rec., 351.) Counsel for appellees insisted that appellants should be limited to the original seventy-five names and refused to produce any more information until that list was exhausted (Rec., 352), and, on the advice of counsel, the witness refused to produce the information called for. (Rec., 353.)

Counsel for appellees took the position before the master that appellants had not the right to call for such papers and information in appellees' possession as they saw fit but that they should be limited

to a certain number of names, concerning which they called for such papers (Rec., 382), and that as to the seventy-five names then under consideration, he would be able to show that appellees had original information for every rating that appeared opposite their names, and, therefore, that the evidence thus far produced would not warrant any further inquiry. (Rec., 383.) That if the result of the examination as to the seventy five names was such as to satisfy the court that as to those names there had been no piracy, appellants should not be allowed to "go on and take seventy-five more names and then seventy-five more until they exhausted the full 60,000 which our (their) book contains." (Rec., 384.)

In other words, his position was that inasmuch as appellants had selected seventy-five names and called for the papers in the possession of appellees which they claimed to have as the basis of their information, or as containing the information from original sources by their own labor, appellants should be confined to those names, and if they failed to prove piracy in connection with these cases so first selected, they could go no further with the investigation of the papers in appellees' possession. His position seems to be that appellants had selected these cases as samples or test cases, and that if they failed on these, their whole case must fail.

Appellants then caused a subpoena *duces tecum* (Rec., 60) to be served on the witness to produce certain information relating to a list of names attached to the subpoena. (Rec., 384.) On the advice of counsel, the witness refused to produce this information. The master directed the witness to

produce the information, but he still refused (Rec., 387-388), and his counsel asked that the question be certified to the court. (Rec., 388.)

Thereupon appellants filed in court a petition setting up fully the facts showing the filing of the bill, the motion for a preliminary injunction, the reference to the master, the proceedings before him, and the facts showing the materiality of the evidence called for, and praying for an order of court directing the witness to produce the evidence called for. (Rec., 47.)

This petition was heard by the court, and an order entered on March 8, 1902, granting leave to appellants to examine the witnesses as to twenty-eight additional names, to be selected by appellants, and the rule discharged as to Mr. William Clancy, the witness. (Rec., 64.)

Thereupon another subpoena *duces tecum* was issued directing the witness to produce all written and printed information in his possession or control, or in the possession or control of appellee, The Lumbermen's Credit Association, relating to the persons or corporations named in a list annexed to the subpoena, and used in determining or fixing the ratings of said persons, firms and corporations. Attached to this subpoena was a list containing twenty-eight names. (Rec., 65.) This subpoena was served on the witness, but he refused to produce the information called for. (Rec., 388-389.) The record was again certified to the court (Rec., 392) and application made to the court for a rule on the witness to produce the information called for. (Rec. 67.) The court heard the motion and denied it. (Rec., 68.)

On July 3, 1902, a rule to close proofs was entered (Rec., 69), and on October 8, 1902, upon motion of counsel for appellees an order appointing Marshall E. Sampsell (clerk of the court) special examiner (Rec., 70) was entered.

The testimony taken by the master was introduced before the special examiner (Rec., 636) and further testimony taken.

Mr. Clancy was asked to produce the "Red-Bound Books" relating to his July, 1901, edition, and stated that he had been unable to find them, and says they were probably sold in the old waste paper (Rec., 404), so that appellees furnished the "Red-Bound Book" relating to the January, 1902, edition only, and no others; although they claimed to have in their office the data upon which their several editions were based. Upon his first examination before the master he did not say that he could not produce these books, but that he understood only those of January, 1902, were called for, and finally that he had no objection to bringing the others (Rec., 320, 321), and his counsel said he had no objection to producing what he could find.

The witness, Wheaton, refused upon the instructions of appellees' counsel, to answer the question, how long he had used similar "Red-Bound Books" in making up editions of appellees' books. (Rec., 645.) This was a proper question on cross-examination.

From what has been said it would seem that counsel for appellees, and the Circuit Court as well, took the view that the seventy five names were to be taken as a test of the whole work, and that appellants

should be confined to those names. If the court was right, which we do not admit, it would seem but fair, just and equitable, that the test should apply as well to appellees as to appellants, and that if the court proposed to determine the controversy by comparison, the comparison should have been between the instances of piracy conceded by the court to have been proved and the seventy-five names used as a test, and not with the sixty thousand names contained in appellees' book.

We can see no good reason in law or equity why in a case like this, the complainants should not have been permitted to go as far as they saw fit in their investigation. The court was undoubtedly influenced by the argument on behalf of appellees of the inconvenience and expense of the proceeding, but we submit that these considerations were not entitled to the weight given them by the court. If the charges were made by appellants in good faith they were certainly entitled in a court of equity to every opportunity to prove their truth. The injustice of the court's rulings which enabled the appellees to obstruct and limit appellants' investigations, is made apparent by the opinions of both the Circuit Court and the Court of Appeals, which find against appellants for the very reason that they did not produce more specific cases in which the evidence of piracy could not be disputed. It is a fair and legitimate inference that if among the seventy five names investigated so many were proved to be piracies the same proportion would have continued in the remaining names if they had been as thoroughly examined and tested.

But, aside from the question of the restriction put upon appellants as to the testimony, we insist that the test applied by the courts below was an unfair one. To determine the question by simply comparing the number of specific cases of piracy proven with the whole number of names in appellees' books, or with the whole volume of information contained therein, and because they are few in number when so compared declare them "insignificant," was to decline to give to the other evidence in the case the weight to which it was entitled, and to ignore the evidence tending to prove a general and systematic appropriation of appellants' copyrighted matter of which these specific cases were but the ear-marks, confirming and corroborating the evidence as to general piracy, and discrediting all of the witnesses on behalf of appellees who testified to the contrary.

The court seems to have overlooked the evidence of Wm. E. Ferguson, a witness for appellants. He testified that while in the employ of appellees he worked on the July, 1901, edition as a "rater" and used the Red-Bound Books both for comparison and *fixing* ratings; that he used the ratings appearing in that book when he could get no other information (Rec., 397); that he used his discretion in adopting the ratings in the Red-Bound Book (Rec., 398); that where he found that the ratings of Dun and Bradstreet contained in the Red-Bound Book coincided and differed from appellees' rating and appellees had no information on file, he followed Dun and Bradstreet's ratings. (Rec., 398.) He says that if his information on file was incomplete, he used Dun's or Bradstreet's ratings as a *source* of information.

(Rec., 399.) When Dun and Bradstreet differed in their ratings, he took a rating half-way between, ordinarily. (Rec., 399.) He also states that he saw Mr. Stadden, Mr. Wright, Mr. Clancy and one other, whose name he did not remember, using these Red-Bound Books.

This testimony was entitled to great weight, not only because the witness was entirely disinterested, but because it is inherently true. The whole course of proceeding with reference to these Red-Bound Books suggests the probability that the others who used them did as Ferguson did. The witnesses of appellees admit they had access to the books and were privileged to refer to them, and their denial that in any case they used them otherwise than for comparison, in view of the specific cases of piracy, discredits their whole testimony. In addition to this, they were all interested as employes of appellees. Therefore, the court was, as we think, clearly wrong in basing its opinion upon the assumption that the instances of piracy were few in number and insignificant. It was impossible for appellants to point out every instance in which their books were the source of information, especially where in the cases referred to the rating of appellants was used as the basis for appellees' rating, but so changed that it could not be traced.

The learned judge of the Circuit Court seems to have realized the difficulty of his position, for, after reaching the conclusion, "that the defendants did take some of the items complained of," he says:

> "Generally, such *indicia* is held to indicate a substantial theft of copyright property, but

> taking all the evidence together, I am satisfied that the items selected *as tests* constitute the bulk of all the items taken, and that they are of small moment in comparison with the whole."

Why, in this case, the learned judge of the Circuit Court failed to apply the general rule he refers to and draw the conclusion that naturally followed we are at a loss to understand, unless it be that the seriousness of the consequences to appellees outweighed in his mind the rights of appellants.

We complain that the court took too narrow a view of the case; that it did not take into account and give proper weight to all the evidence; that it did not give proper consideration to the evidence that showed from the beginning a definite purpose to unlawfully appropriate appellants' property, nor the evidence that showed such a systematic, general and continued use of appellants' books as to indicate to any reasonable mind that with such opportunity and temptation to make an unfair use, it was probable, if not certain, they had done so. All that was needed, if anything more was necessary, to make absolutely certain this probability and corroborate the circumstantial evidence was that appellants should point out one or more specific instances in which it could be demonstrated beyond any doubt that appellees had, in fact, pirated from appellants. This the appellants did in the cases referred to by the lower courts and conceded by them to be piratical.

When the court had arrived at this conclusion, in face of the strenuous denial of appellees that they were guilty of any acts of piracy, it should have dis-

credited the denials of appellees and their witnesses as wholly unreliable and unworthy of belief in any particular; accepted as true the evidence on behalf of appellants, and found that under the circumstances disclosed by the evidence with the disposition to appropriate and every opportunity and temptation to do so, appellees did use and appropriate the fruits of appellants' labor, rather than expend their own time and labor to arrive at conclusions which were already before them in black and white in an authoritative form. This was the natural, necessary and inevitable conclusion from the evidence.

Appellees knew the danger in such appropriation *if they were found out*. The danger was in being found out, and, therefore, their work was disguised, or concealed by slight changes, unimportant modifications or additions to destroy the identity of the property. This is a common trick in all kinds of larceny. It is not, therefore, strange that appellants should have found difficulty in tracing their property, and even if in an examination of the whole edition of appellees' book only the few instances mentioned had been clearly pointed out as demonstrated acts of piracy, yet appellants would have been justified in saying, "Your whole course of conduct shows the intent, the opportunity and the temptation to appropriate our property, and as we have found some of our property in your possession, we are warranted in the conclusion that you took and have hidden away much more that we did not find."

2.

The Findings of the Court.

The books in question are not literary productions nor historical or scientific in their character, but are prepared and published for a purely commercial purpose. They are limited in circulation, confidential in character and expressly restricted by contract with the subscriber to his individual use. Their value is temporary only. The information they contain must be recent and disclose the present standing of the persons they report, therefore those cases that permit a liberal use of the copyrighted work for the advancement of learning or the development of science have no application to the books in question. This distinction is pointed out by Putnam, J., in the case of *Sampson Murdock Co. v. Seaver Radford Co.*, 140 Fed. Rep., 539, heretofore referred to; the reason for the rule failing the rule fails.

Posterity is not interested in these books. Appellees were not engaged in the laudable task of gathering together useful information to be handed down to the next generation, nor in the evolution of the science of law or government, but simply in the production of food for immediate uses, as much so as the baker who today bakes bread to be consumed tomorrow. Appellees cannot, therefore, invoke in their defense a rule evolved from a broad and liberal public policy of encouragement of the arts and sciences.

Appellees were inspired by no higher motive in the production of their books than the profits they expected to derive therefrom, and the fact that ap

pellants were moved by the same power in the publication of their works does not affect the question. Their books were valuable property: the result of their time, money and labor, and appellees had no right to appropriate that property or any part of it to their own money-making enterprise. In this case the lines should be tightly drawn as to what was a fair use. There is no reason for a relaxation of them. No interest of the public nor any question of public policy demands a liberal interpretation of them. Nothing is involved but property rights and money value.

In a purely literary production, an infringement is easily detected. There must to some extent be verbal identity or a reproduction of ideas in such form as to be easily detected, but in case of a directory or book of similar character, if both the original and infringing books are perfectly accurate, there must be an identity of names and other data; and yet in such cases there may be piracy if the later book is not made up from original sources. The difficulty is to obtain the evidence of it.

The reference books in question in this case are not mere directories. The names, it is true, are important parts of the work, but there are other items of information, such as towns, places of business etc. The most important information, however, and that which it is the main object and purpose of both books to furnish, is the financial standing and credit of the persons, firms and corporations enumerated.

To ascertain and report accurately the financial standing and credit of persons engaged in business, requires, first, correct information as to the names

and location of such persons, their business, property and affairs; and, second, experience and sound judgment to draw proper conclusions from the facts ascertained. To obtain reliable information means the expenditure of large sums of money, and to properly digest this information and pronounce judgment upon it, requires the employment of men of more than average experience and ability. To produce a book like the copyrighted books of R. G. Dun & Co. means that many years have been devoted to the work and enormous expense and labor incurred. This is evident from a glance at one of the great volumes and the fact appears from the evidence that its present form has been evolved from many years of labor and at a great expense to appellants and their predecessors.

This is a valuable property, justly belonging to appellants and protected by their copyrights and it is this property they claim the appellees have, to a large extent, deliberately, intentionally and unlawfully appropriated to their own use.

This, we think, the evidence presented to the court below demonstrated.

3.

The Evidence of Piracy.

The only light in which the action of the Circuit Court, in limiting the complainants in the scope of the inquiry they sought to make before the master, on the motion for an injunction, can be viewed, is that the court considered an inquiry limited to a certain number of names amply sufficient to deter-

mine the character of the whole of defendant's work, and that when defendants asked to have complainants confined in their investigation to certain specified names, and the court granted their request, the defendants proposed, and were willing, and the court intended that these names should stand as a test of the whole work of the defendants.

The court on the hearing seems to have overlooked or forgotten his previous action, and finds that although in these cases which he himself styles "test cases," there was convincing evidence of piracy, yet declines to accept these tests as conclusive. On the contrary, after confining the complainants to certain cases as tests, he arbitrarily declares that they are the only instances of piracy in the whole book. In other words, he condemns the complainants for not pointing out a larger number of specified cases of piracy, after he has prohibited them from continuing their search for them. This, we think, was both unreasonable and unjust.

We are justified in saying that had the court permitted us to pursue our investigation as to other names, we should have been able to point out many other instances where the evidence of piracy was as strong, if not stronger, than in the cases presented.

But even without the limitations and restrictions referred to, the law itself draws general conclusions from facts and circumstances which, in the experience of mankind naturally lead to such conclusions.

In considering the evidence, we shall call the attention of the court, first, to the evidence of an intention to pirate; second, to the opportunity and

temptation to do so; and, thirdly, to the actual appropriation of complainants' copyrighted matter in certain cases.

4.

The Intention to Pirate.

Intent is not necessary to constitute piracy, but when it is difficult to ascertain the extent of the copying, the *animus furandi* is important as an aid in determining whether the use made of the copyright was "fair" or unlawful. Where the *animus furandi* is apparent, the presumption is, in the absence of strong evidence to the contrary, that the likeness between the two works is due to copying. (Drone on Copyrights, 401-403.)

We again call attention to the case of *Lawrence* v. *Dana*, where Justice Clifford, referring to this question, says that evidence of an innocent intention may have a bearing upon the question of "fair use" when the amount taken was small, in determining whether an injunction should be granted by a court of equity.

From which it follows that even though the amount taken was small, if it was taken with the intent of making an unlawful use of it, the wrong doer would not be protected by the fact that the amount taken was "insignificant." The presumption is against him. The burden of proof is thrown upon him. He must overcome the *prima facie* case by strong and convincing evidence.

In considering the *animus* of defendants, we think it proper to refer to the attitude of the defendants

in this case, and, first, we would call attention to the fact that the defendants, in their answers, deny copying from complainants' book. (Rec., 36.) On the contrary, they go so far as to charge that complainants copied from their book, of which there is not a particle of evidence. (Rec., 37.) This denial is itself evidence of the *animus furandi* and was so considered by Wood, D. C., in 3 Kay and J., 708, in which he says: "The very circumstance of that denial on his part is a very strong indication of an *animus furandi*." The defendants knew at the time they filed their answers, as well as they did at the time the testimony was taken, what use they had made of complainants' books. They were charged by complainants with having taken a material part of their book from the copyrights of complainants, and if they had been conscious of innocence, should, as honest men, have been anxious to vindicate themselves by making a full and frank disclosure of the methods pursued in preparing their book for publication.

It will be apparent to the court from even a casual examination of the evidence, that in order to discover and produce evidence of piracy in this case, complainants were compelled to devote much time and infinite labor and patience to an examination and comparison of the two books, and to follow up the clews furnished and develop them to the end. This work imposed great labor upon counsel, as well as upon clients. Defendants and their counsel were well aware of the difficulties in the way, and their tactics in this case were to deny everything and put as many obstructions in the path as possible.

The court cannot read the evidence and controversies between counsel before the master, without being convinced that the defendants had much to hide and proposed to admit nothing and produce nothing until compelled to do so. They were defiant. Witnesses frequently refused to answer questions upon advice of counsel, refused to produce books and papers in response to subpoenas, and succeeded in inducing the court to protect them against the demands of complainants' counsel for papers in their possession.

Therefore, we say the policy of counsel in defense of this case, and the conduct of defendants during the taking of testimony furnish strong evidence of a consciousness of wrong-doing and an intent at the outset to make what they knew to be an unfair use of the copyrights.

The complainants published their reference book four times a year, and they were known as the January, March, July and September editions. The defendants published their book in January and July and in making up their books they used the reference books of complainants to obtain information instead of going to original sources. In compiling their book the defendants first made up the Red Bound Book. Mr. Clancy produced before the master twenty-two parts of the Red-Bound Book used in making or revising their January, 1902, edition. (Rec., 321-322.)

The manner in which complainants' book was obtained shows a fraudulent purpose. Defendants were not subscribers to Dun's book. (See testimony of William Clancy before master, p. 337; see, also

admission in answers of defendants.) Clancy says it was borrowed, and in answer to the question, "From whom?" he says, "I do not care to answer." And upon instruction from his counsel he refuses to answer. (Rec., 338.) He refused to answer whether he ever obtained a book for that purpose from Albert E. Gamet and whether it was not obtained from Gamet under an arrangement by which he was to subscribe for it and give defendants the use of it, and defendants to pay the whole or a part of the subscription. (Rec., 339.)

He also declined to answer whether he ever procured any of Dun's books from D. L. Brady for the purpose of obtaining information from them. (Rec., 339.)

Mr. Clancy is equally uncommunicative as to what was done with the book after it was procured. He supposes that the binder took it apart. (Rec., 339.) He does not remember the name of the binder, nor his place of business, but admits finally that it was taken apart under his or Mr. Stadden's instructions. (Rec., 339.) He shows a disposition to admit nothing, and reveals nothing that will throw any light on the subject, and only gives up such facts as he thinks are already in the possession of the complainants. His testimony does not impress one as the testimony of a witness who is conscious of having done nothing wrong. He is not frank, but impresses one as a witness who is conscious of having done wrong and is seeking to conceal the facts.

After the complainants' books were obtained they were taken to the binder and by him taken apart, and the parts bound in sections by states. After

they had been used they were returned to the binder and rebound, and restored to their original condition. (Rec., 456.) Volkert, the binder who did this work, was an unwilling witness. His memory seemed to be very poor and he was not disposed to furnish any more evidence than necessary. He, too, seemed to be conscious that his work was not exactly legitimate.

After the books had been taken apart and bound in sections these parts were delivered to the defendants. (Rec., 456.) These sections, together with the Red-Bound Book, were then sent to a Mr. Thorbus, another unwilling witness, called by complainants. He was proprietor of a circular addressing company. His instructions were (Rec., 438) to transfer to the Red-Bound Book all ratings given in R. G. Dun & Co.'s book to the names appearing in the Red-Bound Book, and all new names appearing in R. G. Dun & Co.'s book and not in the Red-Bound Book. He does not remember whether he was to make any comparison between the ratings in the Red-Bound Book and the ratings in Dun's book, but he didn't do the work himself. He turned it over to Kelly and Evans. He was a subscriber to Dun & Company's book and obtained the names and ratings from his copy of their book. (Rec., 440.) In order to do the work he took his copy to pieces, so that the part might be distributed among the employes doing the work.

Mr. Kelly testified that he did the work for Thorbus. He put Dun's rating opposite each name in the Red-Bound Book, and put in new names appearing in Dun's book with Dun's ratings. (Rec., 445.)

This witness is also unwilling and does not always remember clearly the facts. He shows the same consciousness that he may be betraying his employer and the same disposition to conceal or forget the facts, but enough appears from his testimony to show that under instructions from Thorbus he took Dun & Company's reference book, cut into sections by states, compared the names in the Red-Bound Book with the same names in Dun's book, added new names which appeared in Dun's book in the lumber and kindred trades, and added the ratings given in Dun's book not only to the new names, but to all the names contained in the Red-Bound Book. It is clear that Kelly received his instructions from Thorbus, and Thorbus received his from Clancy or Stadden. These facts were drawn from the witness with difficulty, and there is apparent all through the examination a disposition to withhold the facts. The examination shows that the witnesses revealed only such facts as seemed from the form of the questions to be within the knowledge of the complainants. After the master had ruled that the Red-Bound Book must be produced (Rec. 321), the defendants produced only a part of the Red-Bound Book of the January, 1902, edition. They claimed to have lost or destroyed the Red-Bound Books of prior editions.

Therefore, we say the manner in which complainants' books were obtained and used shows an attempt to conceal the fact that they were obtained and used. Defendants knew that they had no right to the use they made of them. They were conscious of the fact that they were doing an improper and il-

legal act, and every step in the proceeding, from the obtaining of the books to the rebinding and returning of them, shows an attempt to conceal the facts. The indefiniteness of all the witnesses as to their connection with each other shows a studied effort to hide the connection of defendants with the transactions and prevent the tracing by legal evidence of the instructions from Kelly back to the defendants. It is true, that later in the case defendants recognized their responsibility for this work, but this is only after their connection had been so far proved as to make denial useless.

This secrecy and surreptitious manner of obtaining and using our information demonstrate, as we claim, the disposition and intention to make an unlawful appropriation of our property. They demonstrate a consciousness of wrong-doing. Men do not take pains to envelope their business transactions in mystery and darkness without some motive. If defendants proposed to make only a lawful and proper use of our books, why resort to trickery to obtain possession of them and to secrecy in their use?

5.

The Uses Made of the Red-Bound Books.

Having considered the disposition to appropriate, let us now consider the opportunity and temptation to do so.

The Red-Bound Book having been made up as indicated, we will now consider the disposition and use made of it.

William D. Ferguson was a witness called on be-

half of complainants. He entered the service of the Lumbermen's Credit Association in February, 1901, and continued until October 1, 1901. He was employed as a rating clerk. He worked on the July, 1901, edition. He revised some of the western states. (Rec., 395.) He says his duty was to place rating after the names given him to rate, and to add new names with ratings attached. He used Dun's ratings, both for comparison and in placing ratings upon names upon which he could get no information. (Rec., 396.) He was instructed by Mr. Clancy where to find the Red-Bound Books, and was given a key to Dun's book. (Rec., 397.) He states clearly and distinctly that where defendants had no information on file, or they could get no information, or it was unsatisfactory, he used the rating in the Red-Bound Book. (Rec., 398.) There were cases in which he made a rating half-way between the ratings given in the Red-Bound Book. He refers to what he did and what he saw others do. (Rec., 400.)

He saw Stadden, Wright and Mr. Clancy using parts of the Red-Bound Books. (Rec., 401.) His method of procedure is fully explained and appears to have been in accordance with instructions from Mr. Clancy himself.

In his cross-examination he repeats that in the July, 1901, edition of defendants' book, there are names for which he had no basis of ratings other than the Red-Bound Book (Rec., 414), and it does not detract from the force of his statement that he was unable, on cross-examination, to point out the particular names. It would be a marvelous feat of

memory if he could. He is positive he did not have information on all the names.

Miss Frances H. Moore, an employe of the Lumbermen's Credit Association, and, therefore, an unwilling witness, was called by complainants and examined as to these Red-Bound Books. She says there were in these books "the additional names and ratings taken from Bradstreet and Dun's books," written in pencil and in no regular order, and says: "I could only distinguish one from the other by knowing the ratings." (Rec., 462.) She was perfectly familiar with these books and what they contained, and knew the source from which the ratings were obtained. She says these books are used by the raters "to compare our information with the ratings given in the Red-Bound Book." She says that the states east and south are revised in the January edition and the others in the July edition. (Rec., 465.) The whole of defendants' book was not revised before each edition, but only about one half of it. It is important to keep this in mind, for if it should happen that plaintiffs had made changes in names or ratings in one of its editions, such changes might not be made in defendants' next edition, for the reason that the state in which such name appeared was not revised by defendant for its next succeeding edition. She was not asked on her direct examination what use she made of these books, but on cross-examination defendants' counsel went into this subject and she denied that she used them except for comparison.

Defendants called witnesses who testified to the use they made of the Red-Bound Book.

Mr. Clancy stated that the raters have charge of this revision work under his and Mr. Stadden's instructions; that Mr. Stadden, Fuller, McLane, Howard, Knefler, Wright and himself did the revision work on the January, 1902, edition. (Clancy's testimony, Rec., 768.) He testified he did not know where McLane was at the time he testified, nor where Mr. Gilbert, formerly in the employ of defendants, was. (Rec., 775.)

All of these raters who worked on the revision of January, 1902, were called as witnesses by defendants, except McLane and Gilbert, whose whereabouts were unknown to Mr. Clancy, and except Fred W. Wright.

Mr. Wright was also in defendants' employ, but not at the time this suit was commenced. He returned to their employ five or six months after the commencement of this suit. Mr. Wright was not called as a witness by defendants to explain what use he made of the Red-Bound Books while acting as a rater in defendants' business.

It appears that Wright made an affidavit which was filed in this case with the bill and which was introduced in evidence. (Rec., 78.)

In this affidavit Mr. Wright tells what use he made of the books. He says, among other things:

"The copies of the said reference book of the said Lumbermen's Credit Association, in which names and ratings were copied from the said R. G. Dun & Company's reference book as aforesaid, were called or denominated by the said defendant, 'The Red-Bound Books,' to distinguish the same from

the other books in the office of the said Lumbermen's Credit Association. Each of the said 'Red-Bound Books,' after the same was made up as aforesaid, was distributed in parts among certain employes of the said Lumbermen's Credit Association for the purpose of compiling the January, 1901; July, 1901, and January, 1902, editions of the said reference book of the said Lumbermen's Credit Association; each of the said 'Red-Bound Books' was so used by the said employes under the direction of William Clancy, the president of the said Lumbermen's Credit Association, and Burton W. Stadden, the secretary thereof. I was one of the said employes to whom parts of the said 'Red-Bound Book' were so assigned. Each of the said employes was furnished with a key to the ratings of the said Lumbermen's Credit Association and a key to the ratings of the said R. G. Dun & Company; and in compiling the said January, 1901; July, 1901, and January, 1902, editions of the said reference book of the said Lumbermen's Credit Association, as aforesaid, the said employes, among other things, fixed the ratings to be given to the persons, firms and corporations mentioned, and I, as one of such employes, fixed the ratings in the parts of the said editions which were assigned to me as aforesaid. I was directed by the said Clancy to consult the said R. G. Dun & Company's ratings as shown in the said respective 'Red-Bound Books' in fixing the ratings for the said respective editions of the said reference book of the said Lumbermen's Credit Association, and, acting under such instruction of the said Clancy, I did in every case use the said R. G. Dun

& Company's ratings as they appeared in the said respective 'Red-Bound Books' as one of the sources of information upon which I relied in fixing the ratings determined by me as aforesaid, and in many cases no other information besides the said R. G. Dun & Company's ratings was furnished to me for the purpose of fixing the ratings so determined by me, and in such cases I copied the said R. G. Dun & Company's ratings as they appeared in the said 'Red-Bound Book'; and in many other cases there was a difference between the said R. G. Dun & Company's ratings as they appeared in the said 'Red-Bound Book' and the ratings indicated by other information furnished to me, and in such cases I either copied the said R. G. Dun & Company's ratings or split the difference between the same and the ratings indicated by such other information. I have seen other raters in the employ of the said Lumbermen's Credit Association, and Mr. William Clancy himself, use the said R. G. Dun & Company's ratings as shown in the said 'Red-Bound Books' in fixing ratings for the said January, 1901; July, 1901, and January, 1902, editions of the said Lumbermen's Credit Association Reference Book."

Elmer Wheaton worked on the revision of the January and July, 1901, and January, 1902, editions. Among the material furnished him for use were these Red-Bound Books. He says he used this book simply as a suggestion. Made no use of it except as to classifications. Never copied or transferred any name or rating from the Red-Bound Book "unless we got information which would tend to show that it ought to go in." (Rec., 640.) Yet, on cross-

examination, he admits he had a key, and says he used the books more as a matter of curiosity than anything else, and that "very frequently" would find differences between their own ratings and those in the Red-Bound Book, but in such cases he was governed by the information he had on their own blanks and wrote and got further information. He says that although he knew their own ratings were correct, there was always a possibility of error. They would change their ratings in some cases, but he does not think they ever did. Thinks they were always corroborated when he wrote for information. (Rec., 644-645.)

This witness refused to answer how long he had used similar Red-Bound Books in making up editions of the Lumbermen's Credit Association.

When he did rating at home he admits he took the Red-Bound Book with him for the purpose of referring to it, and that he may have referred to it "once in a long time." (Rec., 646.)

Again, he says he only referred to Dun and Bradstreet's ratings in the cases "where the information furnished indicated a very bad financial condition" and in the cases heretofore mentioned. (Rec., 650.)

Mr. Heber Fuller, another rater in the employ of defendants, says: "We had a book called the Red-Bound Book, which could be referred to in case the rater thought it was advisable to do so; it was simply an optional matter, as I understood it." (Rec., 658.) Of course, he says he referred to it very little, and never copied any names or ratings. He

was perfectly familiar with Dun's ratings. He had worked for them.

Mr. Knefler, another rater, called by the defendants, says: "In doing this revision work, I made use of the Red-Bound Book for an occasional comparison when the information given on the revision blank by the correspondent was very much at variance with the rating that had been previously assigned me in the book of the Lumbermen's Credit Association in July, 1901; when I had exhausted every resource in the effort and found no information to corroborate or bear out this latter information. I compared the information with that indicated by the rating in the Red-Bound Book. (Rec., 687.) * * * If the comparison was favorable to the information I had received, I assumed a rating based on this information received from our correspondent." What does this mean but that, his own information being unsatisfactory, he referred to the Red-Bound Book and appropriated the information and conclusion of Dun & Company in fixing his own new rating?

This is the testimony of a witness still employed by defendants and who was interested and endeavoring to exculpate himself and his employers from the charge of piracy. The admission he makes is important and significant.

He also was familiar with Dun's ratings and a key was given him, or he made one for himself. (Rec. 682.) This witness also seems to have been actuated largely by mere curiosity in referring to ratings of other agencies. (Rec., 691.)

Philip C. Howard, another rater, called by defendants, testified to substantially the same use of these books as the last witness, and he says the book was at hand to use "when in our judgment we thought it advisable; merely as a check or as a corroboration or negative of the information at hand." (Rec., 697.) He says he referred to the books merely for the purpose of making comparison and with no intention of using the ratings—merely to determine what the comparison would show (Rec., 704), merely as a matter of curiosity. (Rec., 705.)

The explanation of these witnesses of the reasons that induced them to refer to the Red-Bound Book is not very satisfactory. It is strange that they were impelled by mere "curiosity" to consult an authority which they had no intention of using and which they say they did not use.

Elmer Wheaton was asked: "What was your curiosity? What were you curious about?" and his answer was: "Well, I would sometimes find that we had a man rated very poorly, and I knew that it was correct, and some little point would lead me to see how the other authorities rated him." (Rec., 644.)

Mr. Knefler was also asked: "What were you curious about?" and answered: "To see if the others could get information where we couldn't." (Rec., 691.)

Mr. Howard was asked: "What, if any, use did you make of the information in the instance referred to, when you examined the Red-Bound Book?

A. What instance does that mean, any?

Q. The last instance referred to? A. No use at all.

Q. What reason had you for making that examination? A. Well, no definite reason that I recall, except the question was raised as to what the rating may have been in either of the other books previously mentioned.

Q. Was it anything more than a matter of curiosity? A. I think not." (Rec., 705.)

This sort of testimony does not impress us as very frank or honest. That these men were actuated by idle curiosity to consult other authorities for information on a subject they were interested in and seeking information upon and concerning which it was their duty to exercise judgment is, to say the least, improbable.

Mr. Clancy himself testifies on his own behalf as one of the defendants as to this Red-Bound Book. He states how the books are made up. He says they are turned over to Thorbus to secure the new names and ratings shown in Dun and Bradstreet's reference books. (Rec., 765.) On this examination he is very clear and positive as to who did this work, while in his examination before the master when he was called as a witness by complainants, he is not at all certain as to who did the work. He thinks his name is Thorbus. Didn't know he was doing it while it was being done, and didn't know who negotiated with him to do the work. (Rec., 325.) On that examination it required a long and tedious examination to draw from him the facts which showed his connection with the work. While in this last exam-

ination, after the testimony of other witnesses has developed the history of the make-up of that book, he testifies in two lines as to his connection with it and assumes responsibility for it, which he at first tried to escape by concealing the facts.

In explaining the use made of the Red-Bound Book Mr. Clancy says: "We take the new names from the same and send them to our correspondents for financial reports as to their worth and general standing. There may be some new towns we send to. (Rec., 765.) * * * These Red-Bound Books are sometimes used by the raters for comparison. They are used in cases where a very much higher capital or worth report is received from the correspondent on the blank for the revision which they are working on." (Rec., 766.) Then they sought for further information. If none was obtained, he says, it was *very seldom* any change was made in the rating. (Rec., 768.) This indicates that when they received from their correspondents a report on their revision blanks giving to a party a much higher capital rating than he had before in their book, they referred to Dun's rating for comparison. They then sought for further information and in case they were unable to obtain any additional information they did *sometimes* change the rating. Upon what were such changes based if not upon the information obtained from Dun & Co.? It certainly was not upon the strength of the report contained in the revision sheet, because they were not satisfied with that. They sought for confirmation of the report which largely increased the capital rating, and if they found it in Dun's book after they had failed to confirm it

through their own sources of information and then changed their own rating, is it not plain that this new rating was based upon the rating of Dun & Co. and that it was an appropriation of the property and labor of Dun & Co.? And in such cases where they referred to Dun & Co. for confirmation of the report of an increased capital, and after they had exhausted their own sources of information and concluded to make no change in the former rating, is it not fair to assume that this conclusion was the result of the information derived from Dun & Co.'s book? Upon reference to Dun & Co. it may have appeared from that book that they had made no radical change in the capital rating, and therefore, defendants, instead of relying upon their own revision sheet, which showed a much higher capital rating than that previously given, discard their own report consult Dun & Co.'s, and, after such consultation allow the rating to remain as before *because* Dun & Co. have not increased it.

It would be seldom that from one edition to another the capital rating of a merchant or manufacturer would be largely increased, and, therefore, the witness might truthfully say that in such cases as he names they *seldom* changed the rating. But it is apparent that the main value of their book depended upon the correctness of their report in such cases. It is easy enough to report the standings of merchants from year to year if no change in the ratings is made, but the important and difficult part of the business is to be able to ascertain and report promptly and accurately the sudden changes in capital which entitle the merchant to greater or less

credit, and a few serious errors in this respect would destroy the reputation and value of the books. For instance, if a man's capital increases between two editions of defendant's book from one hundred to five hundred thousand dollars and they fail to change his rating, subscribers to that book might justly complain. In such a case, if the increase had been reported on one of defendant's revision sheets and they had failed to get any confirmatory evidence and Dun & Co. failed to note any increase, as we understand witness, no change would be made in the former rating; but suppose in such case Dun & Co.'s latest edition showed that such change had been made and noted in their book is it not perfectly clear from the testimony of defendant's witnesses who used these Red-Bound Books that they would avail themselves of this information and change their former rating? If they did so, then their rating was based wholly upon Dun & Co.'s rating, for they declined to rely upon their own report, and without other information would not have changed their former rating.

Thus, in critical cases, in the cases where it was essential to have prompt, accurate and reliable information, in cases where radical changes in ratings became necessary, in those cases whose proper treatment alone made their book valuable and reliable they consulted, relied upon and used the book of Dun & Co. and appropriated its most valuable information to their own use.

To say that defendants and their employes did not make this use of complainant's ratings is to attribute to them the virtues of the saints who have passed

beyond the temptations of the flesh. Here was set before them a duty to perform which involved painstaking care, laborious research and sound judgment, and in their hands were placed the results and conclusions they were seeking; the labor performed, the conclusions arrived at and the result set down in black and white, all done by an agency whose reputation was established, whose books were received and accepted as reliable throughout the world. To adopt these figures was to credit themselves with sagacity and wisdom; to repudiate them would be to cast doubt upon the thoroughness of their own work; to attempt to verify them by an original investigation would be a weary, laborious and useless task.

All that was necessary was a mere perfunctory performance of a formal duty—a pretense of a search for information—an accumulation of a few postal cards and circular letters, and a final settling back upon the solid rock of Dun & Co.

No ordinary human being would have done otherwise.

6.

The Red-Bound Book was of and in itself an infringement of the copyrights.

The defendants claim that they might lawfully refer to the copyrighted books to learn the names and places of residence of persons to be canvassed, to avoid omissions and errors in their own publication and generally as a guide, and that they did use complainants' book for the purposes of comparison only; but even if their understanding of the law be

correct, this Red-Bound Book shows that they did more than this. After they had obtained a copy of Dun's book they did not content themselves with referring to it simply for the purposes stated, but proceeded to make a substantial copy of those parts of it which covered the lumber trade. They not only checked the names and addresses which appeared in their own previous edition as shown by the Red-Bound Book, but they added any new names and addresses found in Dun's book which did not appear in their own, and, more than this, they transferred to this Red-Bound Book all the letters and figures used as symbols which appeared in Dun's book opposite the names which appeared in their book.

They thus made a complete copy of Dun's book so far as the lumber trade was concerned.

It was certainly not necessary to consult Dun's ratings to ascertain the names or addresses of persons. If the purpose was merely to get names and addresses and to make comparisons to correct errors this could have been done by using the original book of R. G. Dun & Co., and the troublesome and expensive task of transferring all these ratings to the Red-Bound Book could have been avoided. It is apparent the ratings were the essential thing in this book, and that the whole purpose of it was to get Dun's financial ratings.

If there may be said to be any authorship in these books it is in the ratings. All the rest is merely a collection of facts open to the world and requiring only time and diligence to ascertain and report; but the ratings are the conclusions from the facts, and these conclusions are the result of intelligent mental effort.

A credit man in one of our large wholesale houses is paid a large salary, not to report mere facts about a merchant's affairs, but to judge of his financial ability and reliability. He must have the capacity to sift facts and stamp the applicant as worthy or unworthy of the credit he seeks. This is the work Dun & Co. assume to do, and for which they are paid.

When, therefore, defendants appropriated these valuable results of complainants' labor by copying them into the Red-Bound Book they were guilty by that act itself of an unfair and unauthorized use of the copyrights.

If defendants had gone no further, we insist that they were guilty of piracy, but they did not go to all this trouble and expense merely to facilitate comparisons or to gratify the curiosity of themselves and their employes as to what Dun & Co. thought about the financial standing of lumber dealers. They must have intended to make some other use of these valuable conclusions. They must have deemed them valuable or they would not have expended so much time and money in procuring them.

The fact is, the Red-Bound Book was the *basis* of their new edition. The evidence shows it, for names with ratings attached were taken from this book and sent out on revision sheets to defendants' correspondents for reports. (Rec., 364, 365, 378.) These ratings were translated from complainants' into defendants' symbols, or intended to be, but sometimes by mistake the identical letters and figures of Dun & Co. were transferred.

7.

The placing of the ratings of appellants or their equivalent on the revision sheets of appellees, and sending them to their correspondents for reports, was an unfair use of appellants' material.

The Court of Appeals seems to have been inclined to accept as true the claim made by appellees and adopted by the Circuit Court that appellees "used the Dun book only to check names to see if there were any persons concerning whom they had not already obtained information by independent investigation, and to compare Dun ratings in about one case in a hundred with their latest information which indicated a marked change from former ratings; and that in every instance the material in their publication was obtained by their own labors in independent investigation."

The court seems to have overlooked the fact that appellees made a complete transcript of appellants' books so far as they related to the lumber trade and that this transcript was in the possession of or under the control of the employes of appellees who fixed the financial ratings of persons whose names appeared in appellees' books, that notwithstanding the general assertion of appellees and their employes that they only referred to this transcript in rare cases where this latest information indicated "a marked change" from former ratings, the evidence shows this was not true. Leaving out of mind the evidence of Ferguson, a witness on behalf of appellants, who testified positively he and other raters

used this book in fixing their ratings where they had no other information, it appears that these ratings of appellants were translated and transferred to sheets sent by appellees to their correspondents for reports, thus giving to the correspondent the very information he was expected to return to appellees.

This fact clearly appears from appellees' own testimony. Mr. Clancy, one of the appellees, the president of the corporation, and substantially the owner of the whole business, admits this.

We beg to call the attention of the court to the following extracts from his testimony:

Record, 353. "Q. Wasn't it your practice to send those reports to persons and to put the ratings on like the three A's? A. In some cases we have done that.

Q. On the report that you have sent out? A. In some cases.

Q. These reports were sent to your correspondents, were they? A. Yes, sir."

* * * * *

355. "Q. Do you mean to say that you intended to convey to your correspondent the impression that upon information in your office in your possession, this concern ought to be rated at three A's? A. *As our understanding that they were probably entitled to a rating of three A's.*"

* * * * *

"Q. In some of these cases, if not in all of them, these numbers of ratings might refer to the ratings that are given to these names in other reference

books of other agencies, might they not? A. There might be cases of that kind." * * *

357-8. "Q. Wasn't it the practice in your office to put opposite a name on inquiry sheets, or revision sheets, as you call them, letters and figures to indicate ratings as shown by reference books of other agencies?

Mr. PEASE: You call for the general custom, do you?

Mr. O'CONNOR: I object to counsel making constant interruptions; if the witness does not understand me he can say so; I think the question is plain.

A. I said in some cases.

Mr. PEASE: I do not want to be understood as being captious about this, but my position is this. Mr. O'Connor, in your question to establish a custom of our office, it must be a general custom, the question should be framed in that way.

Mr. O'CONNOR: I think I will give the witness a chance to explain himself if there is any mistake.

A. Well, all I can say, Mr. O'Connor, as I understand you, is that these letters and figures opposite these names in some cases have reference to the ratings given to these names in reference books of other agencies." * * *

360. "Q. Look at the paper that has been stamped by the reporter '69.' I see opposite certain names, certain letters and figures, among them I see the letter 'C' and the figure '1' opposite the name of William Crocker; were these letters and figures opposite that name when they were sent out

to your correspondent? A. I should think they were.

Q. These letters and figures indicate the ratings given to these parties in reference books of other agencies, do they not? A. I cannot tell you.

Q. Might they not have reference to the ratings given to these names in the reference books of other agencies? A. It might be possible." * * *

362. "Q. I am not asking whether it was your practice to attach the letter and figure to *every* name but wasn't it your practice to attach letters and figures to some names on inquiries? A. We attach our ratings to some names, yes, sir.

363. "Q. Were not those ratings taken from the Red-Bound Book? A. No, sir; not always.

Q. Weren't they in some cases? A. In some cases we have taken them from our Red-Bound Book.

Q. In this case, 'D 1,' might not the rating have been taken from the Red-Bound Book?

Mr. PEASE: Objected to as being indefinite, 'might have been.'

The MASTER: It seems to me the question is proper.

Mr. PEASE: What do you mean by 'taken from'?

Mr. O'CONNOR: Obtained from.

A. No, sir; I do not think it could be.

Q. Where was it obtained from? A. I cannot tell you.

Q. Where do you think it was obtained from?

Mr. PEASE: I object.

Mr. O'Connor: I want to know if he has any opinion where it came from.

The Master: I think that is proper, Mr. Pease.

A. I could not say; I had nothing to do with handling this blank and I could not tell you; it would be impossible for me to state where that rating came from.

Q. Are you not familiar with the practice of your office? A. Generally so; yes, sir.

Q. You know, do you not, as in fact you have stated, as I understand your testimony, that when these revision sheets are sent out you frequently attach to names on them such letters and figures as indicate ratings, do you not? A. Yes, sir; we do at times; yes, sir.

Q. Are they not generally taken from the Red-Bound Book? A. Those ratings?

Q. Yes. A. Not these ratings, no, sir.

Q. I mean ratings that you attach like this to names on the revision sheets before you send them out, ratings that you put in ink like this. A. I do not just understand what you are getting at, Mr. O'Connor.

Q. On these revision sheets when you send them out, there appear certain printed letters and figures, do there not; indicated ratings? A. On the sheet there, yes, sir.

Q. On your revision sheets are there not usually printed letters and figures opposite some of the names to indicate ratings? A. Yes, sir.

Q. Those printed letters and figures indicate the

ratings given to the names in your last book, do they not, your last printed book? A. The printed ratings?

364. Q. Yes. A. Yes, sir.

Q. In some cases you write in ink new ratings, letters and figures, do you not, on the revision sheet before you send them out? A. In some cases, yes, sir.

Q. Are not those ratings taken from the Red-Bound Books?

Mr. Pease: Do you mean copied or transferred?

Q. (Continuing.) Transferred from your Red-Bound Book? A. The ratings?

Q. Yes; the ratings that appear on the revision sheet in ink before they are sent out? A. Not as I understand your question; no, sir.

Q. Where are they obtained from? A. Why, we have ratings in the office that are attached to new names.

Q. What is it? A. That is, we have ratings that have been gathered and data that has been gathered upon which ratings are based in the office at times.

Q. Do you not in some cases obtain the ratings from your Red-Bound Book? A. Do we take the ratings from it?

Q. Do you not take some of the ratings written in ink on the revision sheets from the Red-Bound Book? A. Not the ratings, no, sir.

Q. Perhaps we do not understand each other as to the term 'ratings.' Take the letters 'D 1' that

is the rating? A. 'D 1' is the rating our company gives, yes, sir.

Q. That is what you call a rating ? A. Yes, sir.

Q. That rating appeared on your revision sheet before you sent it out to your correspondent? A. I don't know.

Q. What would you say about it? A. I could not tell you.

Q. It was your practice, wasn't it, to write these in ink before you sent them out? Did they appear in your revision sheet? A. In some cases.

Q. In those cases where they were on the revision sheet before you sent it out were not these ratings taken from your Red-Bound Book? A. No, sir; there were no ratings of that kind in the Red-Bound Book.

Q. I now see where we differ; when I spoke of these ratings as taken from the Red-Bound Book, I do not mean the identical figures and letters, but the amounts indicated by them. A. Well, I do not know that the amounts would be the same, Mr. O'Connor.

Q. But don't you know that in many cases they were based upon the ratings given in the Red-Bound Book? A. They may have been in some cases.

365. Q. And may not this 'D 1' be based upon the rating given to that firm in the Red-Bound Book? A. I don't know.

Q. May it not have been? A. It may be possible.

Q. That is, in some cases where the rating is put in ink opposite a name on the revision sheet before

you send it out, some of the ratings may have been based upon ratings given to those names in the reference books of other agencies as shown by your Red Book? A. It is possible, yes sir, in some cases."

* * * * *

377. "On the paper numbered by the reporter '259' I see opposite the name or opposite all of the names except that of Charles H. Sleight certain letters and figures. What do these letters and figures indicate? A. It is our key.

Q. That is, the letters indicate the ratings according to your system of rating, do they not? A. They are ratings as shown by our key.

Q. What do they indicate? A. Why, 'A 1' in our key would be $50,000 to $75,000.

Q. That is, they indicate the amount the parties are supposed to be worth according to your ratings, do they not? A. They indicate what they are supposed to be worth.

Q. Yes. A. That is our rating yes, sir.

Q. My question I think is intelligible Mr. Clancy. You say that the first $50,000 to $75,000? A. Yes, sir.

Q. That is, that the party opposite whose name that rating appears is supposed to be worth from $50,000 to $75,000? A. That would be my idea.

378. Q. In like manner the other letters indicate the amounts according to your idea, the ratings indicate the amounts which the parties are supposed to be worth? A. Yes sir.

Q. Were those letters and figures put upon that sheet before it was sent out? A. I cannot tell you.

Q. That is what you call a revision sheet, isn't it? A. That is one of our revision sheets, yes, sir.

Q. It is sent out to your correspondent for inquiries regarding the persons mentioned on it? A. Yes, sir.

Q. Were not these letters and numbers put on it before it was sent out? A. I cannot tell you?

Q. What is your opinion? A. I don't know.

Q. Didn't you frequently put such letters and figures on revision sheets before they were sent out? A. Occasionally, not frequently; no, sir.

Q. It was sometimes done in your office, wasn't it? A. Yes, sir.

Q. Do you know by whom those were put on that revision sheet? A. No sir, I do not.

Q. Where were they taken from? A. I do not know.

Q. You say that such letters and figures are sometimes put on your revision sheets before they are sent out. For what purpose are they put on the revision sheet? A. Why, we have our data and make the rating.

Mr. O'Connor: I object and ask that that portion of the answer be stricken out, because it is not responsive. I ask for what purpose it is done and how it is done.

The Master: It should be stricken out, I think.

Q. For what purpose are those letters and fig

ures put on the revision sheet before it is sent out? A. To show our rating." * * *

This testimony is clearly an admission of the practice of appellees of using appellants' ratings on their revision sheets, and this was a use of appellants' books far different from a mere comparison in those cases only where appellees' latest report showed "a marked change from former ratings."

This testimony is corroborated by the blanks containing the fictitious name of Theodore L. Crawford and others.

If the court will examine the form described as "Town Blank," of which they are many among the exhibits, it will be seen that the blanks contain not only the printed ratings from appellees' last edition, but also other ratings written thereon which were obtained from other sources (and the evidence indicates the source) and that they were returned as they had been sent with the addition merely of a check mark. There is no evidence that the correspondent made any investigation whatever or did anything more than check and return them. The ratings had all been furnished him by appellees. The correspondent returned to appellees the very information he had received from them and from this blank a rating for the next edition was made. This evidence, we insist, amounts to precisely the same thing as though it had appeared that appellees copied Dun's rating into the Red-Bound Book and from that book onto these blanks and handed these blanks directly to the raters to fix the rating. The intervention of the correspondent in all these cases was unnecessary. The raters being familiar

with the process and knowing the sources from which the rating came could proceed with as much confidence as though Dun's book lay open before them. They have only done indirectly what they know they ought not to do directly.

We think, therefore, in the mass of testimony and exhibits produced in this case the courts below must have overlooked this testimony, to which we beg now respectfully to call attention.

It is quite important to appellants to have this court determine whether or not the appellees may rightfully copy the ratings of appellants into their Red-Bound Book and from this book translate and transcribe them onto sheets to be sent to their correspondents, either for the purpose of having them returned to appellees without investigation or to be used by the correspondent as one of his original sources of information. If this can lawfully be done the effect is that the most valuable product of the money and labor of appellants may be appropriated by another without compensation, and appellants be subjected to damages without the possibility of remedy.

By transcribing these ratings to sheets sent out to correspondents, they gave to them the benefit of the results of appellants' labor and investigation and when those sheets came back in many instances merely with a check mark which indicated nothing, the raters of appellees having these sheets to rate from had appellants' ratings before them and were at liberty to use them in fixing their own, and there is no doubt from the evidence that they did use them.

The opinion of the Court of Appeals leaves the impression that the court approves of the method adopted by appellees in making up the Red-Bound Book and in placing appellants' ratings upon sheets sent to correspondents. We do not believe this court will justify this procedure. If so, then appellants' copyrights afford them no protection against any predatory individual or concern that may desire to start a new reference book. He has simply to copy appellants' names and ratings, send the same on blanks to correspondents, who, without leaving their offices, have only to check and return them.

This system is so damaging to appellants' business that we beg the indulgence of the court in urging with great persistence that the court give to this branch of the case due consideration, as we feel convinced this court must come to the conclusion that the law of copyright cannot and does not permit such a practice.

8.

Evidence of Actual Appropriation.

We come now to the evidence of the actual appropriation in certain instances of the property of complainants. The usual evidence in cases like this is to be found in the copying of errors which demonstrates that defendants' information came, not from original sources, but from complainants' book, in which the error is found.

LOVVORN BROS.:

The first of these errors is in the name of Lovvorn Bros., Tallapoosa, Georgia. This name first ap-

peared in complainants' book in September, 1901, as *Loworn Bros.*, with a blank rating. It first appears in defendants' book in January, 1902, as Loworn Bros., with a rating of blank 2. The "2" indicates "Medium pay." The blank rating indicates that they have no information as to capital. (See testimony of T. E. Stein, Rec., 503-504.)

The correct spelling of this name is *Lovvorn Bros.* There never was any concern in Tallapoosa doing business as *Loworn Bros.*

It appears from the deposition of A. Lovvorn, taken in this case that he had been in the lumber business in Tallapoosa for six years prior to 1902 and was a member of the firm of Lovvorn Bros., and had never heard of anybody there by the name of Loworn. To the same effect is the testimony of McBride, banker, and J. A. Head, postmaster. The latter states they have been getting mail ever since they were in business there. (Rec., 164, 166, 167.)

Counsel for appellees in explanation of this item referred to Defendants' Exhibit 79, received from S. L. Craven an attorney at Tallapoosa, Georgia, in which this error appears, claiming that it was a mistake any one was apt to make in so peculiar a name.

The correspondent, however did not write the name "Lovvorn Brothers" in the report to which counsel refer. That name was written by the defendants themselves in the inquiry blank upon which the report was written before it was sent out, and it was evidently copied from the complainants' book into defendants' Red-Bound Book, from which it was copied into the inquiry blank. Not only did the

name appear in the defendants' book misspelled, as in complainants' book, but also the same rating, a blank rating appearing in both books.

LINDSEY & SWAIM, FAIRMOUNT, IND.:

This firm appeared in the books of the complainants and defendants as follows:

IN COMPLAINANTS' BOOK.

Lindsay & Swain from September, 1897, to September, 1898.

Lindsey & Swain from March, 1899, to September, 1900.

Lindsey & Swaim from March, 1901, to September, 1901.

IN DEFENDANTS' BOOK.

Lindsay & Swain from January, 1898, to January, 1899.

Lindsey & Swain from July, 1899, to January, 1901.

Lindsey & Swaim from July, 1901, to January, 1902.

Here the complainants' book contained an error in the name of *each* member of the firm, from September, 1897, to September, 1898. While the name so appeared in the complainants' book it first appeared in the defendants' book in January, 1898,—exactly as it then appeared in the complainants' book—with the two errors in the name; and the name with both errors in it was carried by the defendants from Janu-

ary, 1898, to January, 1899, that is, from the first edition of the defendants' book published after the name with both errors in it first appeared in the complainants' book, until the first edition of the defendants' book, published after the name with both errors in it last appeared in complainants' book. In March, 1899, the complainants changed the name from Lindsay & Swain to Lindsey & Swain, that is, corrected the error in Lindsey's name, but not in Swaim's, and carried the name Lindsey & Swain in their book from March, 1899, to September, 1900. In July, 1899, when the defendants issued their first edition after the correction in Lindsey's name was made by the complainants the same correction appears in the defendants' book, and the defendants carried the name Lindsey & Swain in their book from July, 1899, to January, 1901. Here not only the same correction which was made by the complainants is made by the defendants in the first edition of their book after the correction first appeared in the complainants' book, but the defendants continued to carry in their book the error in Swain's name which the complainants left uncorrected in their book.

In March, 1901, the complainants discovered and corrected the error in Swaim's name, thus finally making the firm's entire name correct. In July, 1901, when the first edition of the defendants' book was published after the correction in the name of Swaim was made by the complainants, the defendants made the same correction in their book. Here again the same correction made by the complainants was made by the defendants in the first edition of their book published after the correction was made

in the complainants' book. Here, then, is a case where the defendants copied two errors in a firm's name in their book after the errors had appeared in the complainants' book, where the complainants corrected one of the errors and the defendants, in their next edition after the correction was made, made the same correction, and where the complainants finally discovered and corrected the other error and the defendants, in their next edition after this correction was made, made the same correction in their book. Would it not be difficult to furnish a more conclusive instance of piracy?

Appellees had several reports from Charles T. Parker as the authority for the spelling of these names and the ratings and claimed that Parker was also the correspondent of R. G. Dun & Co.

On page 257 it appears that the depositions of certain witnesses were taken before Charles T. Parker, a notary public. The fact that Charles T. Parker acted as a notary public in taking a deposition in this case does not prove that he was the correspondent of R. G. Dun & Co. There is no evidence whatever that he ever was the correspondent of Dun & Co.

Although, in the letter of Charles T. Parker, to which counsel refer, the name of Lindsey & Swaim was *correctly* spelled, the defendants in the next edition of their book after this information was received *published not the correct name as given to them by Parker, but the incorrect name as published in the last preceding edition of complainants' book.* Does not this show that defendants relied in this instance as in others, less upon the information in their possession than upon complainants' book?

In the revision blank of April, 1899, the name Lindsay & Swain appeared among the names inquired about, but was corrected by the correspondent by changing the "a" in Lindsay to "e," and the "n" in Swain to "m." Here, although the defendants' rater could not have referred to the inquiry blank, the original source of information, without seeing the correct name nevertheless the name of Swaim appears in defendants' July, 1899, edition (the next edition after the date of the inquiry blank) as Swain, just as it appeared in the last preceding edition of complainants' book (published in March, 1899).

In September, 1899, complainants rated the firm of Lindsay & Swaim at "F" ($10,000 to $20 000). In January, 1900, defendants rated the firm at "C" ($15,000 to $25,000), but in July, 1900, changed the rating from "C" ($15 000 to $25,000) to "BC" ($10,000 to $15,000). The only report received by defendants regarding the firm between April, 1899, and July, 1900, was the report dated April, 1900, which stated that the firm had $1,500 worth of real estate and $2,000 capital in business, and that their total worth was $4,000.

Does this report justify a rating of $10,000 to $15,000? Is it not singular that in the July, 1900, edition of defendants' book not only the incorrect name "Lindsey & Swain" appeared just as it appeared in the last preceding edition of complainants' book (issued in March 1900), but also that the rating of the firm was changed to a rating corresponding as nearly as defendants' key would permit to the rating given by complainants, although the latest information re-

ceived by defendants was less than half of the new rating so given by them to the firm?

WAVERLY *Bentwood* Co., WAVERLY, OHIO:

The name Waverly *Bending* Co. first appeared in plaintiffs' book in January, 1898. In July, 1898, it was changed in plaintiffs' book to Waverly *Bentwood* Co., which is correct. In September, 1898, January, 1899, and March, 1899, both names appear in plaintiffs' book. In July, 1899, the correct name alone appears in plaintiffs' book. In January, 1900, the name appears Waverly *Bending Co.* in plaintiffs' book, and so continued until September, 1901, when the name is correctly given in plaintiffs' book.

This name first appeared in defendants' book in July, 1901, and has always appeared in defendants' book as Waverly *Bending* Co., which is erroneous, and must have been copied from plaintiffs' books, which at that time were also erroneous. This concern was rated by plaintiff in September 1901, at "E2½" ($20,000 to $35,000; Good), and prior to September, 1901, as far back as July, 1899, as "F 3" ($10,000 to $20,000; Good). It was rated in defendants' book in July, 1901, and January, 1902, as "C 1" ($15,000 to $25,000; prompt pay).

Having plaintiffs' rating of $10,000 to $20,000, "Good," at the time they prepared their July edition, 1901, defendants having no rating which exactly corresponded to Dun's "F 3," adopted their rating of "C 1," which is as near to it as any they had, and in January, 1902 having Dun's July, 1901, book, with a rating of twenty to twenty-five thousand, they had no rating to correspond and made no

change in their rating. As Mr. Clancy says, it was very seldom they changed their ratings on reference to Dun's book, unless they had information from other sources. (See Stein's testimony, Rec., 505.)

Marqu*ard* Sash & Door Mfg. Co., Cleveland, Ohio:

This name first appeared in plaintiffs' books in July, 1898, and has always appeared in their books as Marqu*ardt* Sash & Door Mfg. Co., and the same error first appeared in defendants' book in July, 1899, and has always so appeared in defendants' book.

Rated in plaintiffs' book in January, 1899, and subsequent editions at "H 3½" ($3,000 to $5,000. Fair). Prior to January, 1899, at "J 3½" ($2,000 to $3,000. Fair). In defendants' book always rated at "F 2" ($2,000 to $3,000. Medium pay).

It may be said that this is a slight error and apt to occur, but the fact remains that defendants adopted an error that appeared in plaintiffs' book and never discovered it, just as plaintiffs never corrected it. It is a circumstance tending to show that it was copied out of plaintiffs' book. (See T. E. Stein's testimony, Rec., 506.)

L. F. Goree, Spigners Station, Ala. (saw mill):

This name has appeared in plaintiffs' book since 1897, rated as "F 2½" ($10,000 to $20,000. High). It first appeared in defendants' book in January 1902, as at "Spigners Station, Ala. Saw Mill"; rated in January, 1902, "B. C. 2" ($10,000 to $15,000. Medium pay).

It appears from the testimony of James S. Goree, a grandson of L. F. Goree (Rec., 120), that L. F. Goree sold the saw mill business to his son, James Lang Goree, twenty years ago; that James L. Goree died eight years ago; that his widow and son (the witness) ran the business for twenty-seven months and sold it to W. G. Thornhill five years ago, and during the past five years (prior to 1902) nobody by the name of Goree conducted a saw mill business at Spigners. Therefore, when defendants first published this name in its January, 1902, edition, they could not have obtained their information from original sources. They must have copied it from plaintiffs' book, where it had been erroneously carried for years. (See Stein's testimony, Rec., 509.)

There is also an error in the name of the town, both in plaintiffs' and defendants' books. James L. Goree testifies that the proper name of the town is "Speigener," but says, "We leave out one "e" and spell it Spigener." This is a slight error, it is true, but it is evidence that the name was copied from plaintiffs' book and not obtained from original sources.

Two reports are produced by the defendants regarding this name. The first is dated October, 1900, and the second is dated October, 1901. No correspondent's name appears in either. The first report places the value of Goree's stock in yard at about $7,000; but under the headings, "Amount of Insurance on Stock" and "Value of Real Estate," is written, "Don't know." In other words, this report gives no information whatever regarding the assets of Goree, except that he has a stock in yards

of the value of about $7,000. This, of course, is not sufficient information upon which any intelligent rating could be based. The second report gives no information whatever regarding Goree. Yet Goree was rated in the defendants January, 1902, edition at "BC" ($10,000 to $15,000). In the complainants' book he had been rated, since 1897, at "F" ($10,000 to $20,000). It will, therefore, be seen that defendants not merely erroneously inserted Goree's name in their book as plaintiffs did, when, as shown by the evidence, he was no longer engaged in business, and erroneously misspelled the name of the town, just as the complainants misspelled it, but that the rating given in defendants' book corresponds as nearly as defendants' key will permit, with the rating given in complainants' book.

J. A. Brawley, Gould City, Mich.:

This name appeared in plaintiffs' books as J. A. *Browley* from January, 1893, to September, 1901, inclusive. It first appeared in defendants' book in July, 1899, as J. A. *Browley*. (See Stein's testimony, p. 510.)

Rated in plaintiffs' book as "G 3" ($5,000 to $10,000, Good). Rated by defendant as "E 1" ($3,000 to $5,000, Prompt pay).

John Brawley testifies that he is the father of Jno. A. Brawley. Previous to 1881 they spelled the name Browley. Since 1882, have uniformly spelt it Brawley. (See depositions, Rec., 276-279.)

Defendants' Exhibit 124 contains the name "J. A. Browley." This might convey to the court the idea that the correspondents wrote the name "Brow-

ley'' in this report. By reference to the reports 121 and 125, the court will see that no correspondent's name appears in either of them, and that the name ''J. A. Browley'' appears in them only among the list of names on which information was asked, that is to say, it was written ''Browley'' in the inquiry blanks before they were sent out, and was undoubtedly copied from the defendants' Red Bound Book to which it was transferred from the complainants' book.

Although Exhibit 125 rates Brawley from $7,000 to $12 000, defendants in July, 1900 (the next edition of its book after the date of the exhibit) rate Brawley at ''E'' ($3,000 to $5,000). In March, 1900 (the last edition of complainants' book prior to the date of the exhibit) the complainants rated Brawley at ''G'' ($5,000 to $10,000). Perhaps defendants will claim that in this case they put a conservative estimate upon Brawley, but if the court will refer to defendants' inquiry blanks they will find that defendants invariably adopted the ratings as given in the blanks, especially where, as in this case, the correspondent gives his own independent estimate. The court will notice that in this case, as in others, which we have pointed out, the highest figure in the defendants' rating corresponds with the lowest figure in the complainants' rating.

Frank Roethle & Co., Koepenick, Wis.:

First appeared in plaintiffs' book in September, 1900 as Frank Ratthle & Co., and so continued since then. (Rec., 510.)

The name as Frank Ratthle & Co. first appeared

in defendants' book in July, 1901, and in same way in January, 1902.

C. D. Malloy and E. G. Koepenick testify that no one by the name of Ratthle had done business in this place, which seems to have been a small settlement (population, 20), a post-office for lumbering camps in the neighborhood. (Rec., 296, 304.)

W. D. Brown, Pittsburgh, Pa.:

It appears from the deposition of Robert L. Dudley, publisher of the Pittsburgh City Directory, that W. D. Brown appears as treasurer of the Rib River Lumber Co. There is no W. E. Brown shown in the lumber business for three or four years prior to January 1, 1902. (Rec., 190.)

Yet the name of W. *E.* Brown appears in plaintiffs' book as "W. E. Brown, Lumber," blank rating, in September, 1901, and prior editions as far back as March, 1898. The same name with blank rating first appears in defendants' book in January, 1902, as being engaged in the lumber business. (Rec., 511.)

Here plaintiffs made a mistake not only in the initial of Brown's name but also in describing him as being in the lumber business when in fact he was only the treasurer of a lumber company, and the defendants adopt the error in both particulars, and copy the blank rating. Independent investigation would have discovered these errors. It is significant that they make the same error in the middle initial letter, and more so that they should enter the name as of one dealing in lumber in a book devoted exclusively to the lumber trade. The fact that the

rating is also left blank is another indication that no original investigation was made.

On page 193 of the record is shown copy of a page of the Pittsburgh directory, in which W. D. Brown appears as treasurer. The W. *E.* Brown whose name appears immediately below the name of W. *D.* Brown is described as a bricklayer. Not only does the name W. *E.* Brown appear in the appellees' book, as well as in the appellants' book, when no such person was engaged in the lumber business in Pittsburgh, but a blank rating is given to the name in appellees' book as well as in appellants' book.

PHILLIPS & MITTENZWEY, SAWMILL & LUMBER CO.:

This firm appeared in plaintiffs' book in September, 1901, and prior editions as far back as January, 1896, with a rating of "G 3½" ($5,000 to $10,000. Fair). It first appears in defendants' book in January, 1902, with a rating "D 1" ($5 000 to $10,000. Prompt pay). (Rec., 512.) While the fact is, as appears by depositions of Robert L. Dudley and William H. Radcliff (Rec., 194, 198), that they were not in business at any time within three or four years prior to January, 1902. Their names were continued from edition to edition, through an oversight (see deposition of Wigley manager of R. G. Dun & Co.'s Pittsburgh office, Rec., 204), but how did defendants happen to insert them for the first time in their January, 1902, book, three years after they had gone out of business? Any sort of original investigation would have discovered the fact. The conclusion is inevitable that they copied both name and rating from plaintiffs' September, 1901, edition.

Here again not only does the name appear in the defendants' book as well as the complainants' book when no such persons were engaged in business in Pittsburgh, but the same rating is given in the defendants' book as in the complainants' book, the firm being rated in the defendants' book at D ($5,000 to $10,000) and in the complainants' book at G ($5,000 to $10,000).

Counsel claim that this concern had not gone out of business because they say the evidence shows that it went into the hands of a receiver in 1896, and that the creditors have not been paid in full! The fact that the concern went into the hands of a receiver without paying their debts would seem to be pretty good evidence that they had failed and gone out of business. The evidence, however, shows that within four months after his appointment the receiver sold all the concern's assets and wound up its affairs. (Rec., 200.)

HIMEBAUGH & SCHREINER, LAKE, OHIO:

This firm appeared in plaintiffs' book in July, 1901, and prior editions as far back as 1898, as *Heinbaugh & Shriner*, rated since July 1901, as "L 3½" (less than $100. Fair), and prior to July, 1901, as "L 4" (less than $1,000. Limited). In September, 1901, plaintiff corrected the name to *Heinbaugh* & Schreiner (the first name still incorrectly spelled).

This name appeared in defendants' book in July, 1900., as Heinbaugh & Shriner, with rating "E F 2" ($1,000 to $2,000; Medium pay), and has been continued in the same way in subsequent editions. (Rec., 513.)

Although this name was corrected by Dun & Co. in their September, 1901, edition, it was not corrected by defendants in their January, 1902 edition, for the reason that it appears in the State of Ohio, which was one of the states not revised for that edition, Ohio being one of the states revised for the July edition, as explained by the testimony of Miss Moore already referred to.

Here there was error in the spelling of both names in plaintiff's book, and it first appears in defendant's book before any correction was made by plaintiff and the identical error in spelling each of the names is made by defendants. Was the information of defendants obtained from original sources, or were the names, errors and all, copied from plaintiff's book? (See depositions of Jacob E. Himebaugh and William Schreiner, Rec., 266, 269.)

By reference to Exhibit 137, dated March, 1901, the court will see that in the foot-note the correspondent wrote the name "*Heim*baugh & Schriner;" yet the defendants in their July, 1901, edition continued to spell the name not as their correspondent wrote it, but as it appeared in plaintiff's book —Hei*n*baugh & S*h*riner—although Ohio was one of the states which defendants revised in their July edition.

This shows that appellees did not rely so much upon their correspondent as they did upon the source from which they originally obtained the name, namely, complainants' book.

PARK, & STEVENS, SELMA, ALA:

This name has appeared as above in plaintiff's books since July, 1897, and since September, 1899, have been rated as "E 2" ($20,000 to $30,000. High Credit).

The same name, with precisely the same spelling, has appeared in the defendant's books since January, 1900, rated at "C 1" ($15,000 to $25,000. Good). (See Stein's testimony, Rec., 507-508.)

The correct spelling of the name is "Parke & Stevens," and has always been spelled that way by Mr. Parke. (See deposition of Julian B. Parke, Rec., 177.)

Although this name first appeared in the defendants' book in January, 1900, the first report received by the defendants regarding the firm is dated October, 1901, and even that report gives no information whatever regarding the firm, but the correspondents say in it that they are unable to furnish any information regarding the firm. The only other report received by the defendants regarding the firm prior to January, 1902, is the revision blank, dated November, 1901. In that blank the name Park & Stevens (misspelled, it will be observed as in complainants' book) with the rating "C," appears among the names on a printed slip attached to the blank and presumably cut out of the last preceding edition of defendants' book. No information whatever regarding the firm appears in the blank. Nothing is written on the line intended for information regarding the firm. Upon what information, then did the defendants rate the firm "C" ($15,000 to $25,000) in January, 1902,

and upon what information did they base their rating of the firm prior to January, 1902, when the earliest information they received regarding the firm is dated October, 1901? In complainants' books the firm has been rated from September, 1899, at "E2" ($20,000 to $30,000, high credit), and in the defendants' book since January, 1900, at "C1" ($15,000 to $25,000, good). The defendants, therefore, not only copied in their July, 1901, and January, 1902, and preceding editions the name as misspelled in the complainants' book, but gave to the firm the same rating as complainants gave to the firm, as nearly as defendants' key would permit.

9.

Fictitious Names.

James H. Forlong, proofreader of R. G. Dun & Co., testified that there are certain fictitious names of persons in the lumber trade in Dun & Co.'s book put by him under instructions in the July and September editions, 1901 (Rec., 149).

In the July, 1901, edition, he mentions the name of "Crawford—Theodore C., Sashes, Doors and Blinds, D 1½" ($35,000 to $50,000, High). This on page 15, in the State of Alabama, under the town of Huntsville.

Another is Selma, Ala., "Curtis & Payne. Business, Planing Mill, G 3" ($5,000 to $10,000, Good). (See page 21 of July, 1901, edition.) The witness testifies that he coined these names for the sole purpose of ascertaining whether or not competitors or third persons were copying or stealing information from complainant's book.

William L. Halsey testified that he is a merchant and has lived all his life in Huntsville, Ala., and that no person by the name of Theodore C. Crawford was engaged in the sash, door and blind business in Huntsville, Ala., in 1901 or prior thereto. (Rec., 113).

Julian Parke testifies that he is engaged in the sash, door and blind business in Selma, Ala., and that there was no firm by the name of Curtis & Payne engaged in any business in Selma or vicinity in 1901 and 1902 (Rec., 178).

E. Gilman, Nathan Kahn and Dr. A. W. Cawthorn testify to the same effect. They were all citizens of Selma, and had been engaged in business for many years (Rec., 171, 181, 183).

So there can be no question that these names are purely fictitious. The evidence of Mr. Forlong that he coined these names ought to be sufficient, but to exclude the possibility that by chance he may have hit upon names of persons having an actual existence, this testimony was taken.

Appellees attempted to explain the appearance of the name of Curtis & Payne in their book. In the court below counsel referred to two inquiry blanks regarding this firm, one dated October, 1901 (Exhibit 81), and the other dated November, 1901 (Exhibit 82). In the first, the correspondents say: "We know *nearly* all the parties inquired about but not sufficiently accurate to make the report." In other words, the correspondents say that they do not know all the parties inquired about, and cannot give sufficient information to make a report on any of them. In the second report, the name of Curtis &

Payne, with the rating "D-1" after it, appears on the inquiry blank among the names upon which information was asked. No information, however, regarding the firm appears in the report, but, on the contrary, the eighth line where any information regarding the firm was to be inserted by the correspondents is blank. Where did the defendants obtain the rating "D" when they inserted it in the inquiry blank? The court will bear in mind that this rating which in the defendants' key means $5,000 to $10,000, prompt pay, corresponds exactly with the rating "G 3" which was given in the complainants' September, 1901, book, and which, in their key signifies $5,000 to $10,000, good. Here, again, the defendants not only copied the name from the complainants' book, the only place from which it could have been copied, as it was a fictitious name invented by the complainants, but also copied the rating given by the complainants.

Appellees' counsel claimed in the court below that the name of Curtis & Payne appeared in a certain trade journal, dated January 1, 1902. Clancy testified that defendants' January, 1902, edition was put in the hands of the printer in the latter part of November or the first part of December, and it is, therefore, very improbable that defendants saw the name of Curtis & Payne in the trade journal before their January edition was completed. But the name having been shown by complainants to be fictitious, the burden of proof was upon defendants to show where they got the name, and there is no evidence in the record to show that they copied it from the trade journal. On the contrary, they produce what they call original information to show,

as we understand, that they got the name from their correspondents. Even if we assume that defendants saw the name in the trade journal before their January, 1902, edition was completed, they saw no *rating* in the trade journal. Where, then, did they get the rating (corresponding exactly with complainants') if they did not get it from complainants' book?

It is not remarkable that the name appeared in the trade journal. A trade journal, we presume, publishes names of new firms in the trade which it represents, and the trade journal to which counsel refer published, we suppose, the name of Curtis & Payne simply because it appeared as a new firm, in complainants' September, 1901, book. The trade journal, like defendants, assumed that the name was genuine, and copied it from complainants' book.

In explanation of the name of Theodore C. Crawford appellees produced four reports, but referred to only two of them in their brief in the Court of Appeals in which they said: "Defendants' Exhibit 128 is a report dated October 10, 1901, received from David A. Grayson, Huntsville, Alabama, containing the name Theodore C. Crawford, S. D. & B.—A 1. Defendants' Exhibit 132, dated October, 1901, is a report containing the name Theodore C. Crawford, received from Huntsville, Alabama, AB—1, S. D. & B. Here then are two reports which are not the same, one rating Crawford at from $50,000 to $75,000, and the other at from $35,000 to $50,000. Complainants cannot claim that each of these reports is copied either directly or indirectly from the Dun & Company book, as they differ."

Four reports, as we have said, were offered in evidence by the defendants regarding this name—Exhibits 128, 130, 132 and 134. In the first the name "Crawford, Theo. C.," with the letters "S. D. & B." and the rating "A-1" after it, appears on the blank among the names which were written on the blank by the defendants, and upon which the defendants asked for information. The rating A-1 was not made by the correspondent, but was put in the inquiry blank by the defendants before they sent it out. Opposite the name Crawford in the blank appears nothing but a long dash, which evidently means that the correspondent could furnish no information regarding the name. We entertain a strong suspicion that when the clerk of the defendants copied the name into this blank from the Red Bound Book, he made a mistake in writing the rating "A" instead of "A B." However, an inquiry blank which merely asks for information regarding a name and gives a rating as a suggestion of the probable rating to be given to the name, but which was returned by the correspondent *unanswered* certainly does not justify counsel's statement that it is "a report" * * * giving a rating of "A-1" to Crawford.

Exhibit 130 is a similar blank, containing the name, "Crawford, Theo. C.," the letters "S. B. & D." and rating "A. B-1" among the names inquired about, and opposite the name of Crawford is written "Don't know."

Exhibit 132 is a similar blank containing the name "Crawford, Theo. C.," the letters "S. B. & D." and the rating "A B-1," among the names inquired about; but no information whatever appears on the blank.

Exhibit 134 is a similar blank containing the name "Crawford, Theo. C.," the letters "S. B. & D." and the rating "A B-1" among the names inquired about, but no information whatever appears in the blank.

Where, we ask, did defendants get the rating A B when they put it in their inquiry blanks, unless they took it from the Red Bound Book, into which they copied it from complainants' book? Not only did defendants copy the fictitious name from complainants' book, but they gave it exactly the same rating that was given in complainants' book, and the reports which they produce as original information give absolutely no information whatever regarding the name—and, of course could not have given any information concerning the name, as it was fictitious.

And yet these names appear in defendants' book precisely as they appear in complainants' book and with the same ratings. As these appear in no other place than complainants' book, as the persons they pretend to represent had no existence, defendants must admit they copied them bodily from complainants' book. There were no original sources of information, and it is evident that defendants in these cases made no investigation whatever. (See testimony of T. E. Stein, Rec., 515.)

The significance of this evidence is that it proves to a demonstration that in some cases defendants did appropriate the property of complainants, and if it is demonstrated that in these cases where the names were fictitious and there is no possible explanation of the theft, we are justified under the

authorities in saying that these are not the only cases in which such appropriation was made. With the disposition to steal, the opportunity to steal, the temptation to steal, and positive evidence that they did steal these names, notwithstanding the denial of defendants and their witnesses that they ever did steal our property, the conclusion is inevitable that they did the same thing in other cases which, from the nature of the case, they were able to conceal.

It is inconceivable that these are the only instances in which they appropriated names and ratings from our books, and that in the only two cases in which they were guilty of this offense they should have happened to select fictitious names where the proof of the theft could be established beyond any controversy.

These names are the key to the whole case. They demonstrate as true what complainants had reason to suspect, and make absolutely certain by direct evidence what all the circumstantial evidence indicates to be true, that defendants were in the habit of using complainants' books, not for comparison merely, but for the purpose of obtaining information as to the financial standing of persons engaged in business, and upon that information basing a rating.

Counsel seemed inclined to doubt that these names are really fictitious. In view of the testimony of Mr. Furlong, proofreader of the appellants, that he coined these names, and put them into the book under instructions, it would seem that if appellees doubted this testimony they might have produced some evidence of the

existence of the persons represented by these names, especially in towns no larger than Selma and Huntsville. Not only, however, does Mr. Furlong testify that he invented these names, but the depositions of witnesses who had long been engaged in business in Selma and Huntsville show that no such persons as Curtis & Payne were known at Selma and that no such person as Theo. C. Crawford was known at Huntsville.

These fictitious names show the facility with which reports could be produced, even where no investigation could have been made.

They show the danger to appellants of the system adopted by appellees. They show that their investigation was merely a matter of form to bring themselves within the letter of the law while they were violating its spirit. They show that the real basis and foundation of their financial ratings was the Red Bound Book and that their raters relied upon that and not upon their own reports.

10.

Names and Ratings not Based on Information Obtained by Defendants.

It appears from the evidence that in making up the new edition of its books it was the practice of defendants to send out to their correspondents in various cities and towns what were called revision sheets. These sheets were simply sheets containing the names and ratings of persons in the particular town as they had appeared in defendant's last preceding edition, and the purpose was to have the cor

respondent revise and return these sheets to the defendants. Defendants also claim that in these revisions for new editions they had other sources of information upon which they based their ratings and changes in ratings for their new editions.

For the purpose of testing the truth of this claim, complainants called upon defendants to produce before the master the information upon which they based their ratings for certain specified names, and they produced in answer to this request certain sheets, cards and letters, as the sources of information on which their ratings and reports in these cases were based. Among these names we wish to direct the attention of the court to the following, and in connection therewith to the exhibits produced as the authority for the reports on these names in defendants' book:

St. Johns C. M. & M. I Co., St. Johns, Ariz.:

This name appears in defendants' book of January, 1901, with no rating. It appears in their July, 1901, and January, 1902, editions, rated "D 1" ($5,000 to $10,000—Prompt pay).

The only information produced by defendants in support of their rating was Exhibit 33, which is a postal card marked "Received Feby. 19, 1900," containing the name of the firm and the words "Dealers in sash, doors, etc." It contains nothing upon which the financial standing of the concern can be based, and yet we find them rated in defendants' July, 1901, and January, 1902, editions as worth from $5,000 to $10,000 and as being "prompt pay."

Where did defendants get the information upon

which to base this rating? They have produced no evidence except the postal card above mentioned.

If we turn to complainants' March, 1901, edition we find the name of this concern with the following: "G. S. Mfg. Co. Flour, etc., D 2," which interpreted means "General Store; $35,000 to $50,000, Good."

The fact that this concern was engaged as "Dealers in sash, doors, etc.," the defendants learned from their postal card, but it may be said that the rating is not the same in defendants' book as in complainants', and, therefore, it may be argued that it was not copied from complainants' book. It is, however, significant that defendants use the same letter, "D," to indicate the financial standing of the concern as complainants use, but complainants' "D" indicates $35,000 to $50,000, while defendants' "D" indicates $5,000 to $10,000. It is evident that in referring to complainants' books for information as to this concern, defendants were careless enough to transcribe the letter "D" found in complainants' book, instead of using a letter of their own key to indicate the equivalent. How else can this wide discrepancy in the financial standing of this firm be explained? It is not possible that if both complainants and defendants went to original sources for information in regard to a concern in a remote and small town they could have differed so widely as to the financial worth of the parties. Dun rates them as worth at least five times as much as defendants do.

It is no answer to say that Dun & Co. may have been mistaken, for defendants are under suspicion

and have been called upon to explain the sources of their information in this particular case, and they furnish no evidence except the postal card.

The term "prompt pay," is the equivalent of Dun's rating "credit good," so it is at least safe to defendants to say "prompt pay" when complainants say "credit high," or "good," for a man's credit could hardly be "good" or "high" in the commercial world if he was not "prompt pay."

McCoy & Trotter, Monticello, Arkansas:

Prior to January, 1902, this firm was rated by both complainants and defendants for several years at C, which meant in complainants' key $75,000 to $125,000, and in defendants' key, $15,000 to $25,000. In defendants' January, 1902, edition their rating of this firm was changed from C to AA ($75,000 to $100,000). The only information which the defendants ever received regarding this firm was Exhibit 34, dated October, 1899, which estimated the firm's total assets, including read estate, at $20,000. Exhibit 35, dated October, 1900, which estimated the firm's total assets, including real estate, at $50,000, and Exhibit 36, dated October, 1901, which estimated the firm's total assets, including real estate, at $60,000. Where did the defendants obtain the information upon which they based their rating of $75,000 to $100,000, unless they took it from the book of the complainants which the evidence shows they used when fixing their ratings?

Amos Hawley, Hawleyville, Conn.:

Rated in complainants' book from September, 1897, down to and including March, 1901, at H ($3,-

000 to $5,000). Rated in defendants' book from January, 1899, down to and including July, 1901, at H ($100 to $500). The only information received by defendants regarding Hawley prior to the issue of their July, 1901, edition, was Exhibit 98, dated October, 1898, Exhibit 99, dated October, 1899, and Exhibit 100, dated October, 1900, none of which gave any information whatever as to Hawley's capital.

Defendants called attention to the fact that although these exhibits gave no information regarding the financial responsibility of Hawley, they reported him as medium pay and worthy of credit, and counsel claimed that "the most natural rating we could give a man in regard to whom little information can be obtained was $100 to $500." Why did not the defendants give Hawley a blank rating, or the rating of 100, which, according to their key, means that the information in their possession is not sufficient to base any rating upon it. This, of course, would have been the only rating to give to Hawley to correspond with the defendants' reports. If, as counsel say, "the most natural rating to give a man in regard to whom little information can be obtained, was $100 to $500," why was not this rating instead of a blank rating given to Lovvorn Brothers, concerning whom Exhibit 79 showed (as counsel claimed) the following: "Medium pay; temperate and attentive to business, moderate ability and business habits, small credit; these are nice young men of small means, but seem to be doing good business and very reliable."

The true explanation of the defendants' rating of Hawley is that their rater copied complainants' rating H without translating it into defendants' key.

J. H. McArthur, Montgomery, Ala.:

Rated by complainants from March, 1899, to March, 1901, at G, which means in complainants' key $5,000 to $10,000. Rated by defendants in January and July, 1901, at G, which means in defendants' key $500 to $1,000. The only information received by defendants prior to the issue of their July, 1901, edition was Exhibit 124, dated October, 1900, which put McArthur's total worth, including real estate, at $1,800, and reported him of good business ability, worthy of credit and prompt pay.

In September, 1901, complainants continued to rate McArthur at G ($5,000 to $10,000). In January, 1902, defendants changed their rating of McArthur from G ($500 to $1,000), to D ($5,000 to $10,000), the same rating as complainants' G, but the only information received by defendants regarding McArthur prior to January, 1902, and after the receipt of Exhibit 124, in October, 1900, was Exhibit 125, dated October, 1901, which gave no information whatever regarding McArthur's capital, except that inquiry was made regarding four persons, of whom McArthur was one, by sending the defendants' printed form of inquiry sheet to a correspondent, who, in a foot-note says, that he does not know the exact amount each of these persons is worth, but thinks that they run from about $3,000 to $30,000; but which is worth $3,000 and which is worth $30,000, he does not state. How, then, did defendants happen to change McArthur's rating so as to make it correspond exactly with the rating given to him in complainants' book?

Counsel's explanation of this item in the court below was that in rating this man at G, $500 to $1,000, when the information in their possession showed that he was worth $1,800 and of "good business ability, worthy of credit, and prompt pay" they were acting with conservative judgment; but if the court will examine the inquiry sheets of defendants, they will find that defendants invariably adopt the rating given in the inquiry sheets, especially where the correspondent gives an independent estimate, as in this case. The rating "G" appeared in both complainants' and defendants' books. The only reasonable explanation of the rating of $500 to $1,000, when the information in defendants' possession showed that McArthur was worth at least $1 800, is that defendants' rater intending to copy complainants' rating carelessly copied the letter "G" from complainants' book, without translating it into defendants' key.

Counsel claimed that defendants were justified in changing their rating of McArthur from G, $500 to $1,000, in July, 1901, to D ($5,000 to $10,000), in January, 1902, by complainants' Exhibit 125, which, they claimed, states that each of several persons mentioned in the report are worth from $3000 to $30,000. If the court will refer to Exhibit 125, they will find that what the correspondent said was: "Do not know the exact amount each of them are worth, but I think they run from about three to thirty thousand dollars." It is absurd to say that this means, that each of the four persons inquired about in the report is worth from about $3,000 to $30,000; in other words, that it intends to give the same rating to each of the several persons,

namely, from $3,000 to $30,000. The most obvious interpretation to give to it is that the several persons are worth different amounts, ranging from $3,000 to $30,000. But even if the report could bear the interpretation which counsel give to it, it would rate McArthur from $3,000 to $30,000, which is certainly very vague information upon which to base anything like a definite rating. Is it not very suspicious that where the information was so indefinite, even upon counsel's own interpretation of the information, defendants should give McArthur in their January, 1902, edition, exactly the same rating which complainants gave him in their last preceding edition (September, 1901)?

South Bend Wagon Company, South Bend, Ind.:

From March, 1898, down to and including September, 1900, complainants rated this company at D ($35,000 to $50,000). From July, 1899, down to and including January, 1901, defendants rated this company at B ($25,000 to $35,000). The earliest information received by defendants regarding this company is Exhibits 169 and 170, both dated May, 1900, so that the defendants had no information upon which to base any rating prior to that time. It will be observed that the highest figure of the defendants' rating ($25,000 to $35,000), corresponds with the lowest figure of the complainants' rating ($35,000 to $50,000). This peculiarity will be seen in other cases to which we will call attention.

Morris & Lowe, Cordova, Md.:

Rated by complainants in September, 1900, and in March and September, 1901, at F, which means in

complainants' key $10,000 to $20,000. Rated by defendants, in July, 1901, and January, 1902, at F, which means, in defendants' key, $2,000 to $3,000. The only information received by defendants regarding this firm prior to the issue of their January, 1902, edition, was Exhibit 189, dated October, 1900, in which the firm was reported to be worth, including real estate, $5,000, and was rated at "E 1" ($3,000 to $5,000, prompt pay). The defendants' clerk, who first fixed the rating of this firm for the defendants in July, 1901, evidently resorted to the complainants' book for information and intending to adopt the rating in it copied from it the letter F by mistake instead of translating it; and defendants' clerk, who fixed the rating for the firm for the defendants in January, 1902, finding no information regarding the firm in the defendants' possession later than the edition of July, 1901, continued the rating given to the firm in that edition.

Here defendants did not follow their own report. The information in their possession when preparing their January, 1902, edition was more than a year old. It was easier to copy Dun's rating than to get a new report. It is certainly singular that the defendants did not follow their usual rule in this case of adopting the rating given by their correspondent, especially when the correspondent gives his own estimate. The court will note that the only information in the possession of the defendants in this case, when they were preparing their January, 1902, edition, was more than a year old. A concern professing to furnish a reliable estimate of a man's worth ought certainly to want better information upon

which to base a rating than information more than a year old. Both complainants and defendants used the same letter (F) in rating the firm. Is it not reasonable to suppose that when defendants' clerk found that the only information in the possession of the defendants was more than a year old, he resorted to complainants' book for information, and, intending to adopt complainants' rating, carelessly copied complainants' letter F, without translating it into defendants' key?

F. A. Whitney Carriage Co., Leominster, Mass.:

From March, 1899, to March, 1901, complainants rated the company at C, which means, in complainants' key, $75,000 to $125,000. In January, 1901, and July, 1901, defendants rated the company at C, which means, in defendants' key, $15,000 to $25,000. The defendants obtained no information regarding the company prior to July, 1901, but in October, 1900, they received a report regarding F. A. Whitney, stating that he was interested in several companies and "good for any amount desired." The earliest report received by defendants regarding F. A. Whitney Carriage Company is dated July 23, 1901, and estimates its net assets at about $150,000. Here again, the letter indicating the rating in complainants' book was by mistake originally copied into defendants' book, and, for want of later information, was continued in the next edition.

The defendants had no information whatever upon which to base their rating of the company in January and July, 1901, of $15,000 to $25,000. This rating can be accounted for in no other way than that the defendants' rater resorted to complainants'

book to see what rating complainants gave to the company and intending to copy complainants' rating, inadvertently copied the letter "C", the rating in complainants' book, without translating it into defendants' key.

J. M. Cogo & Co., Port Jervis, N. Y.:

In March and September, 1897, and March, 1898, complainants rated this firm at F ($10,000 to $20,000). In January, 1898, and July, 1898, defendants rated this firm at D ($5,000 to $10,000). No information was obtained by defendants regarding this firm prior to October, 1898. Here, again, it will be observed that the highest figure of defendants' rating ($5,000 to $10,000), corresponds with the lowest figure of complainants' rating ($10,000 to $20,000).

Charles Crouse, Littleston, Pa.:

From March, 1897, down to and including March, 1901, complainants rated Crouse at F, which, in complainants' key, meant $10,000 to $20,000. From January, 1898, down to and including July, 1901 defendants rated Crouse at F, which, in defendants' key, meant $2,000 to $3,000. The only information received by defendants regarding Crouse prior to July, 1901, was three postal cards (Exhibits 293, 294 and 295), dated respectively, December, 1899, November, 1900, and December, 1901, which merely stated that Crouse was engaged in the lumber business, and gave no information whatever regarding his capital or assets. In January, 1902, defendants gave Crouse no rating whatever, which meant that they had no information regarding him. Here,

again, the letter indicating the rating in complainants' book was by mistake originally copied into defendants' book, and, for want of later information, was continued in subsequent editions.

CREOLA LUMBER COMPANY, CREOLA, ALA.:

Rated by complainants in March, 1901, at D, which in complainants' key, meant $35,000 to $50,000. Rated by defendants in July, 1901, at D, which, in defendants' key, meant $5,000 to $10,000. The only information received by defendants prior to July, 1901, was Exhibit 11, dated January 29, 1901, and part of Exhibit 13, dated February 6, 1901. Exhibit 11 states that the company's authorized capital was $50,000, and was all paid in; that $20,000 of the capital was invested in timber land, that the balance of the capital was to be invested in building mill and railroad. Exhibit 13 states that a certain bank (not named) reported that the company had a capital of $50,000; owned real estate, consisting of pine lands and mills; had asked for no accommodations; that the parties connected with it appeared to be of good character, habits and business standing, and that the bank saw no reason why the company's credit should be questioned. Exhibit 13 further stated that from other inquiries it was learned "on capital authority," that the company's mill-plant, including houses, lumber and all, was worth $35,000, and upwards; that it was doing quite a business; undoubtedly had something outstanding; that the authorized capital of $50,000 was probably fully represented in the business; that no complaints were heard respecting payments, in fact, that the company thus far had been quite prompt and satis-

factory; that it was believed to have good prospects and was really deserving of favorable consideration. There is certainly nothing in these reports to justify a rating of only $5,000 to $10,000. Is it not evident that the person who fixed that rating copied the letter D by mistake from complainants' book without translating it?

In September, 1901, complainants continued to rate the company at D, but in January, 1902, the defendants changed their rating of the company from D to AB, which meant exactly the same as complainants' D, namely, $35,000 to $50,000. In October, 1901, defendants received a report (Exhibit 10) which valued the company's stock in yard at $35,000, and its estimated capital in business at $50,000. This report was not as full and certainly not more favorable than the preceding reports received by the defendants in January and February, 1901, and, therefore, the fact that upon this report defendants gave to the company a rating of $35,000 to $50,000, clearly shows that they recognized their mistake in giving the company the rating of $5,000 to $10,000 in July.

WATERBURY LUMBER & COAL CO., WATERBURY, CONN.:

This company was rated in complainants' book from March, 1897, down to and including March, 1901, at C, which, in complainants' key, meant $75,000 to $125,000. It was rated in defendants' book from January, 1898, down to and including July, 1901, at C, which, in defendants' key, meant $15,000 to $25,000. The only information which defendants received regarding this company prior to July, 1901, was the following:

A condensed report, dated April 30, 1895 (Exhibit 117), shows that the company's authorized capital was $25,000; that its officers were men of good character, habits and business ability; that they were honest in their business transactions and prompt in meeting their obligations, were considered in credit for their reasonable business requirements, and had good prospects of success.

A condensed report, dated June 1, 1896 (Exhibit 117), shows the net assets of the company, above its liabilities, to amount to $206,431.25.

A condensed report, dated February 27, 1897 (Exhibits 118 and 119), shows that under date of January 1, 1897 (Exhibit 113), they received a report showing the company's net assets to amount to $125,000.

A condensed report, dated December 1, 1898 (Exhibits 114 and 116), shows that the company had not submitted a statement since February, 1897; that according to the report of that date the company's net assets amounted to $125,000; that in May, 1895, they submitted a statement showing that the amount of the company's assets was $206 431.25.

In October, 1899, the defendants received a report (Exhibit 111), which merely stated that the company's reputation was excellent, and gave no information regarding its capital.

In October, 1900, the defendants received a report which merely stated that the company was thoroughly responsible, but gave no information as to its capital.

Here, although the information in the possession

of the defendants estimated the company's net assets at $125,000 to $206,431, the defendants gave the company a rating of $15,000 to $25,000. They evidently copied the letter C by mistake from the complainants' book when they first rated the company in January, 1898, and continued it in subsequent editions until they discovered the mistake in preparing their January, 1902, edition. The significance of this case is that even where they had and produced in evidence a report which would have justified the rating given in the January, 1902, edition, yet, in two editions following this information they published Dun's symbol "C," which, in their language, meant an entirely different thing. Their own report on file shows that Dun was correct and the error in their books clearly shows that they originally copied the letter "C" from Dun's book. That such a mistake should have been made proves the habit of appropriating Dun's material. The attempt to conceal this piracy did not always succeed, and it is only because these little slips disclose the methods of defendants that we lay so much stress upon them. When the theft is disguised by slight changes it is exceedingly difficult, if not impossible, to point it out, but the fact that it is made clear that in certain instances which we are able to point out they did appropriate our property justifies the conclusion that in other instances with the like opportunity and the same temptation they did the same thing, even though we are unable to point to the identical spots where it was done.

In September, 1901, complainants continued to rate the company at C ($75,000 to $125,000). In

January, 1902, defendants changed their rating of the company from C (\$15,000 to \$20,000) to AA (\$75,000 to \$100,000), although a report received by defendants in November, 1901, and the only report received by them after receipt of Exhibit 110, in October, 1900, rated the company at "C 1" (\$15,000 to \$25,000). The new rating of \$75,000 to \$100,000, which defendants adopted, it will be noted, corresponded as nearly as their key would permit, with complainants' rating of \$75,000 to \$125,000. Why raise the rating from \$15,000 to \$25,000 to \$75,000 to \$100,000, when the latest information received by defendants accorded with the rating which they had given to the company for several years? If it be said that the defendants may have based their new rating upon their earlier information, we reply that their earlier information was of little value as to the *latest* condition of the company, especially when it was inconsistent with their latest information. If, as Clancy and other witnesses of defendants testified, it was the practice of defendants, where there was a material difference between the rating found in complainants' book and the latest information received by defendants, to write for further information, why did not the defendants write for further information in this case? Evidently when the defendants found that there was a considerable difference between their information and complainants' rating, they adopted complainants' rating, and if, in adopting it, they were influenced by the fact that their earlier information corresponded with it the fact remains that the earlier information was of little importance in determining the latest condition

of the company, and that in fixing a rating to indicate the *latest* condition of the company the defendants adopted complainants' rating, and rejected their own latest information.

CHAMPLAIN MFG. CO., BURLINGTON, VT.:

In September, 1897, complainants rated the company at D plus, which, in complainants' key, meant $50,000 to $75,000. In January, 1898, defendants rated the company at D, which, in defendants' key, meant $5,000 to $10,000. The only information received by defendants regarding the company prior to January, 1898, was Exhibits 326, 327, 328, 329 and 331, none of which gave any information regarding the capital of the company except Exhibit 329, which rates it at A ($50,000 to $75,000), prompt pay; (the same rating as complainants'). How did defendants get the letter D if they did not copy it from complainants' book by mistake?

J. P. ASHCRAFT, HUNDRED, W. VA.:

From September, 1897, down to and including March, 1899, complainants rated Ashcraft at D ($35,000 to $50,000). From January, 1898, down to and including July, 1899, defendants rated him at AB ($35,000 to $50,000).

The earliest information obtained by the defendants regarding Ashcraft is dated October, 1899. There was, therefore, no information in the possession of the defendants upon which it could base any rating of Ashcraft from January, 1898, to July, 1899. How, then, did it happen that they gave him exactly the same rating as complainants?

A. H. Ordway & Co., S. Framingham, Mass.:

Rated by complainants in September, 1901, and for several years prior thereto, at C, which, in complainants' key, meant $75,000 to $125,000. Rated by defendants from January, 1900, down to and including July, 1901, at C, which, in defendants' key, meant $15,000 to $25,000. The earliest information obtained by defendants regarding this firm is dated October 1, 1900, so that defendants had no information upon which to base a rating prior to that date. Here, again, the letter indicating the rating in complainants' book was originally copied into defendants' book by mistake of the rater, who intended to appropriate complainants' rating, but failed to substitute defendants' letter to express the same or a similar rating.

Howard Gaylord & Co., S. Hadley, Mass.:

In March and September, 1897, this firm was rated by complainants at C plus ($125,000 to $200,000). In January, 1898, defendants rated the firm at AA ($75,000 to $100,000). Defendants received no information regarding this firm prior to January, 1898, so that they had no information upon which to base their estimate of January, 1898. The only report which they have prior to that date is a condensed report, dated September 1, 1897, which says: "We are not furnished any particulars or details of their financial standing, but reported that there has been no change in their financial condition during the past year. * * * We have written for special report and have also applied for personal statement." Their next report is a statement, dated

January 1, 1898 (Exhibit 214), but defendants could not have used this report in fixing the rating of the firm in January, 1898, because it is marked on the back, "Received, Sept. 7, 1898." The date of January 1, 1898, seems to be written over an erasure. The date seems to have been originally first of September. The statement was evidently made out in September, 1898, because it is embodied in a condensed report (Exhibit 215), which refers to it as dated September 1, 1898. Therefore, it is evident that defendants had no information whatever upon which to base their report of January, 1898.

HATCH & BARNES, WORCESTER, MASS.:

In March, 1901, and for several years prior thereto, complainants rated this firm at E, which, in complainants' key, meant $20,000 to $35,000. In July, 1901, and for several years prior thereto, defendants rated the firm at E, which, in defendants' key, meant $3,000 to $5,000.

In September, 1901, complainants continued to rate the firm at E. In January, 1902, defendants changed their rating of the firm from E ($3,000 to $5,000) to B ($25,000 to $35,000). The only information received by defendants regarding this firm between July, 1901, and January, 1902, was Exhibits 228, 235, and, possibly, Exhibit 226.

Exhibit 228 is dated October, 1901, and rates the firm at E 3 ($3,000 to $5,000, slow pay). That is, this report indicated that the rating which the defendants had been giving to the firm was correct and ought to remain.

Exhibit 226 was received by the defendants on January 17, 1902. Clancy testifies that his January, 1902, edition was put in the hands of the printer in the latter part of November or the first part of December. It is very probable, therefore, that Exhibit 226 was not considered in fixing the rating of the firm in January, 1902.

Clancy, however, says that a book is "never made up until it is printed"; that "we make corrections right up to the last minute." If we, therefore, assume that Exhibit 226 was considered in fixing the rating of the firm, there is nothing in it which would justify the rating of $25,000 to $35,000, because it merely states with reference to the firm's capital that the average cash value of their lumber stock is $10,000 to $12,000; that the value of their machinery is $8,000, but that there is a mortgage on the machinery. How could this indefinite information justify the defendants in raising the rating of the firm from $3,000 to $5,000, to $25,000 to $35,000 in the face of the report of October, 1901, giving the rating of the firm as E. 3? This, then, is another case where defendants rejected their latest information and adopted the rating of complainants.

That defendants did not place much reliance on Exhibit 226 appears very plainly from a condensed report, dated January 17, 1902, forming a part of Exhibit 235, and based, as Mr. Clancy says, upon Exhibit 226, which says that the exact financial condition of this firm "may be a matter of uncertainty; that they make no statement, and exact conclusions regarding them are rather hard to draw; that if they are seeking favors from the trade they should be asked to make a statement."

If defendants claim that their last rating was justified by a statement in Exhibit 235 to the effect that "their responsibility as a basis of credit is now commonly placed at $25,000," this does not justify a rating of $25,000 to $35,000, when at the same time they received this report they received Exhibit 228, dated October, 1901, which rated the firm at "E 3," which confirmed the previous rating given by defendants, and Exhibit 226 was received later than Exhibit 235, and if received before the book was published it is natural to suppose it would have been the one relied upon. The information in their possession was of so uncertain a character that it seems evident their rating was based not upon their own reports, but upon Dun's rating.

WILLIAM L. BULLOCK, MT. HOLLY, NEW JERSEY:

For several years prior to September, 1898, complainants rated Bullock at J, which meant $2,000 to $3,000, and in January and July, 1898, defendants gave him a blank rating. In September, 1898, complainants continued to rate him at J ($2,000 to $3,000). In January, 1899, defendants rated him at EF ($1,000 to $2,000). Defendants had no information regarding Bullock in January, 1899, upon which to base any rating. The first information regarding him produced by the defendants is Exhibit 265, dated October, 1899. Here, again, the highest figure in defendant's rating ($1,000 to $2,000), corresponds with the lowest figure in complainants' rating ($2,000 to $3,000).

In March, 1899, complainants continued to rate Bullock at J, and in July, 1899, defendants continued to rate him at E F.

In September, 1899, complainants changed their rating of Bullock from J ($2,000 to $3,000) to H ($3,000 to $5,000). In January, 1900, defendants changed their rating of Bullock from EF ($1,000 to $2,000) to F ($2,000 to $3,000). In October, 1899, defendants received a report which gave Bullock's total worth, including real estate, as $3,000, and which of course, justified the rating F.

In March, 1900, complainants continued to rate Bullock at H ($3,000 to $5,000), and in July, 1900, defendants continued to rate him at F ($2,000 to $3,000). Defendants received no information regarding him between January and July, 1900.

In September, 1900, complainants changed their rating of Bullock from H ($3,000 to $5,000) to G ($5,000 to $10,000). In January, 1901, defendants changed their rating of Bullock from F ($2,000 to $3,000) to G ($500 to $1,000), although defendants received no information whatever regarding Bullock between July, 1900, and January, 1901, and although the only information in their possession represented Bullock to be worth $3,000 and upon this information they gave Bullock a rating of $2,000 to $3,000 from January, 1900, to January, 1901. Is it not clearly apparent that the letter G was copied from the complainants' book into the defendants' book by mistake of the rater, who intended to appropriate complainants' rating, but carelessly failed to substitute the letter in defendants' key corresponding to complainants' G?

In March, 1901, complainants continued to rate Bullock at G. In July, 1901, defendants continued to rate Bullock at G. Defendants received no infor-

mation regarding Bullock between January and July, 1901. They, perhaps, did not discover the error because New Jersey is one of the states revised in the January and not the July edition.

Hopkins & Williams Co., Newton, New Jersey:

Prior to March, 1899, complainants rated the company at F ($10,000 to $20,000), but in March, 1899, complainants changed their rating of the company from F ($10,000 to $20,000) to D ($35,000 to $50,000). In September, 1899, complainants continued to rate the company at D ($35,000 to $50,000). Prior to January, 1900, defendants rated the company at C ($15,000 to $25,000). In January, 1900, defendants raised their rating of the company from C ($15,000 to $25,000) to AB ($35,000 to $50,000), the same rating as complainants, although defendants received no information whatever regarding the company between July, 1899, and January, 1900, or even between January, 1899, and January, 1900. The reason that the new rating was not adopted by the defendants in their July, 1899, edition, although it appeared previously in the complainants' March, 1899, edition, was, perhaps, because New Jersey is one of the states which the defendants revised in their January and not in their July edition.

In March, 1900, complainants continued to rate the company at D. In July, 1900, defendants changed their rating of the company from AB ($35,000 to $50,000) to D ($5,000 to $10,000). The only information received by defendants regarding the company between January and July, 1900, was a statement received from the company under date of May

1, 1900 (Exhibit 271), showing net assets above liabilities of $58,587.02. This statement is embodied in a condensed report (Exhibit 270), in which the defendants say:

> "On the outside we learn that this is an incorporated company; that its capital stock is $10,000; that it has on hand a stock of lumber of the cash value of $5,000; that it owns real estate of the value of $20,000, consisting of coal and lumber yards, buildings, dwellings, barns, planing mill, etc.; that there is no encumbrance on the property, no chattel mortgages or judgments against the firm; that the members of the firm are of good reputation, character and business capacity, and are prompt in taking care of their payments."

Certainly there is nothing in this report to warrant the defendants in reducing the rating of the company from $35,000 to $50,000 to $5,000 to $10,000. The only reasonable explanation is that the letter D was by mistake copied from the complainants' book into the defendants' book.

It is not denied that in March, 1899, complainants changed the company's rating from "F" ($10,000 to $20,000) to "D" ($35,000 to $50,000), and that in January, 1900 (the first edition after March, 1899, in which the State of New Jersey was revised in defendants' book), defendants raised the company's rating from "C" ($15,000 to $25,000) to "AB" ($35,000 to $50,000), the same as complainants, although defendants received no information whatever regarding the company between January, 1899, and January, 1900.

It is not denied that, although defendants in July, 1900, reduced the company's rating from "AB"

($35,000 to $50,000) to "D" ($5,000 to $10,000), the only information received by defendants prior to July, 1900, showed the company's net assets, above liabilities, to be $58,587.02. How could defendants base a rating of $5,000 to $10,000 upon information estimating the company's net assets at $58,587.02, if their rater did not take the letter D from complainants' book by mistake?

Counsel claimed that the reason this concern was rated at much less than the amount of its cash assets is because its capital stock was $10,000 and it was the custom of the L. C. A. at this time to rate on capital stock and not on capital stock and surplus, and referred to page 816 of the record. On page 816, Mr. Stadden testifies: "We originally rated corporations only on the amount of their paid up capital." But they changed this plan, he says, within the past two or three years. This witness was testifying in 1902, and as we understand him, he commenced in 1899 or 1900 rating corporations according to capital and surplus. Yet it was in July, 1900, that appellees reduced the rating of this firm from $35,000 to $50,000 to $5,000 to $10,000. If they formerly rated according to capital only, and later took into consideration surplus as well as capital, how did it happen that in July, 1900, the appellees reduced the rating of this company from the higher to the lower figure, and if, when the higher rating was given, they were rated according to capital only, how did they get the higher rating?

10.

Similar Ratings.

There is another test which has been applied to defendants' book which affords strong circumstantial evidence of piracy.

While it is true that with equal facilities, industry and ability the employes of both concerns going to original sources of information ought to learn the same facts, and if these facts were reviewed and considered by two men of equally sound judgment, experience and discrimination, the results of their separate conclusions would be the same or similar, yet when we consider that the rating as to a man's financial ability is a conclusion based upon the facts before the rater, it is not likely that the raters of two distinct concerns would be men of exactly the same degree of intelligence and judgment, or that they would arrive at the same conclusion from the same facts, and when the facts disclosed by the evidence as to the methods adopted and followed by defendants in making up their editions are considered, showing the disposition, the temptation and the opportunity to appropriate plaintiffs' work, the similarity in rating in so many cases is strong corroborative evidence that defendants did appropriate plaintiffs' labor, skillfully and successfully concealing the theft in most instances.

Theodore E. Stein, a witness called by complainant, testified that he made an examination of the books of Dun & Co. and the defendants' books with reference to similarity of ratings in them. He com-

pared the September, 1901, edition of Dun & Co.'s book with the January, 1902, edition of defendants' book.

In the State of Michigan be found in defendants' 1902 edition.....	2,974	names
Of these the number not in Dun's book was.....	715	
Names in both.....	2,259	

Dun does not as a rule rate men who do not carry a stock, *i. e.*, commission men, lumber men, brokers, etc. Defendants do carry these classes.

Of these 2,259 names found in both books 868 had the same or similar ratings; 571 had a similar capital rating; 100 had similar reference ratings (that is, a reference to some other name or place for the rating); 188 bore no rating at all as to capital in either book (pp. 516-524).

It is not necessary to go through this examination in detail, but the testimony is here and can be referred to. It will be found that in every state a large proportion of the names which appear in both books have similar ratings.

The attempt of defendants' counsel to discredit this witness in cross-examination did not succeed. As the symbols used in the two books do not correspond, it was impossible for defendants to always use a symbol in their own code expressing the exact equivalent of the rating given in Dun's book, but the letters used designate a rating near enough to be called similar and that is all we claim. It was more convenient than otherwise for defendants to make a similar rating rather than an identical one.

The witness says he treated the four A's of defendants as similar to AA, A plus, A or B plus, of Dun & Co.

According to defendants' key the four A's indicate "very high."

Three A's indicate over $100,000. Therefore, four A's must mean much over $100,000.

Dun's AA means over...		$1,000,000.00
A plus means...	$750,000.00 to	1,000,000.00
A means	500,000.00 to	750,000.00
B plus means...	300,000.00 to	500,000.00

The defendant's figures go no higher than $100,000, and, therefore, it was fair to say that if they copied Dun's ratings, their four A's were used where any one of the four symbols of Dun & Co. above mentioned were given, and the ratings were properly classed as similar.

He compared the three A's of defendants (over $100,000) with the "C plus" of Dun & Co. (which means $125,000 to $200,000) and with the "B plus" (indicating $300,000 to $500,000).

The AA ($75,000 to $100,000) with C ($75,000 to $100,000).

B ($25,000 to $35,000) with E ($20,000 to $30,000)

B C ($10,000 to $25,000) with F ($10,000 to $20,000).

G ($500 to $1,000) with L (less than $1,000).

H ($100 to $500) with M (less than $500) (p. 607).

Defendants did not deem it necessary to report the amount of capital of persons who were worth over $100,000, and, therefore, in referring to plain

tiffs' book if they found letters indicating capital in amounts in excess of $100,000 it was only necessary for them to use either their three A's, indicating "over $100,000," or their four A's, indicating "very high."

In like manner Frank J. Gallagher compared the July, 1901, edition of defendants' book with the March, 1901, book of Dun & Co., and gives in detail the similar ratings (p. 608).

VI.

The Court of Appeals refused to grant appellants leave to file a supplemental bill in the nature of a bill of review, and a hearing upon newly discovered evidence.

In the petition for rehearing filed by appellants one of the reasons stated for a rehearing was that since the hearing and determination of the case, appellants had learned of new evidence material to the issues, and which they believed would materially affect and change the opinion of the court, and in support of this petition submitted certain affidavits (Rec., 1046 to 1055).

Appellants also filed a supplemental petition for rehearing, submitting an additional affidavit of Philip C. Howard.

The court denied the petition, but did not indicate whether this denial was because the court doubted its power to grant the relief prayed for or because it did not deem the grounds assigned sufficient.

While it is not a common practice for a Court of

Appeals to grant a rehearing to let in newly discovered evidence, yet we think such a court has the power to do so when in its opinion the interests of the parties in justice demand it.

If it is made to appear that the decree of the court below has been obtained by perjury or fraud and the court imposed upon, and the parties injured thereby have been unable to obtain evidence of the facts until after the final determination of the case by both the trial court and the Court of Appeals, but while the Appellate Court still retains jurisdiction pending a hearing on the petition for rehearing, we see no good reason why that court may not for any reason that seems to it sufficient and in furtherance of justice send the case back to the lower court for such further proceedings therein as may be necessary.

In the case of *Off* v. *Hakes*, 142 Fed. Rep., 364, an affidavit of a witness was filed subsequent to the master's report in which the witness stated that he was confused and mistaken when he testified, and that he wished to correct his testimony in conformity with the affidavit.

The Circuit Court of Appeals of the Seventh Circuit in referring to this affidavit says that "With the decree substantially resting upon the truth of the bankrupt's story as preserved in the testimony, we are not satisfied that it can rightly be affirmed irrespective of another objection to be considered without resubmission to hear such further pertinent testimony or corrections as may be tendered upon the single issue in controversy." The court did not seem to doubt its power to direct the resub-

mission of the case for the hearing of further testimony. Although this question was not presented in a petition for rehearing, and it does not appear whether or not the affidavit was filed in the Court of Appeals or in the court below, yet it seems to us this is immaterial, the Court of Appeals being of opinion that justice required the hearing of further testimony and having jurisdiction of the case, it undoubtedly had power to enter any order that would tend to promote justice and prevent a decree based upon false testimony.

In *R. R. Co.* v. *Schmitt*, 100 U. S., 644, where it appeared that the approval of a bond for supersedeas had been obtained by fraud, the court set aside the approval of the bond. Chief Justice WAITE in delivering the opinion said:

> "Under these circumstances, the bond was approved. To allow it to stand and to operate as a stay of execution upon an important decree until the case can be reached in its order on our crowded docket, would be a reproach upon the administration of justice. We are aware that in *Jerome* v. *McCarter* (21 Wall, 17) we said: 'That upon the facts existing at the time the security was accepted, the action of the justice, within the statute and within the rules of practice adopted for his guidance, is final,' and that we would 'presume that when he acted, every fact was presented to him that could have been.' We are not inclined to depart from that rule, but, in a case of this kind, fraud is always open to inquiry. When discovered, justice requires that summary relief should be afforded, whenever and wherever it may be done consistently with the forms of orderly judicial procedure. This bond is as much false as if it had been forged. The persons who signed it

> are not in fact what they were represented to be. We have no hesitation in setting aside the approval of the bond."

To say that in such a case as this an Appellate Court is powerless, would in the language of Chief Justice WAITE be a "reproach upon the administration of justice." A court of the dignity and power of this court or of the Circuit Court of Appeals is not to be hampered by technical rules of practice in striking at fraud and imposition.

It may well be that a court would hesitate to grant a rehearing upon the grounds stated, except in an extreme case, and where the application is supported by strong and convincing reasons for its action, but we believe this court will not be disconcerted by the claim that to do so would be out of the usual course of practice on rehearing.

It may be that the Court of Appeals did not deem the reasons stated sufficient to justify the exercise of its power to grant the relief asked. It does not appear from the opinion of the court that it doubted its power; nor does it appear what view the court took of this application. The rehearing was simply denied.

Assuming then, as we do, that the court had ample power, we think the facts presented in the petition for rehearing and the supplemental petition entitled appellants to some relief.

It appears that after the case had been submitted to the court Philip C. Howard, who had testified as a witness on behalf of appellees, called at the office of one of appellants' counsel and expressed a desire to be recalled as a witness and gave counsel to

understand that if he and some of the other witnesses on behalf of appellees could be recalled their testimony would be materially different from the testimony they had given. Howard also stated that he was about to leave the city and left his address (Rec., 1052.).

Later, in answer to a letter to him (Rec., 1050), he wrote to counsel a letter (Rec., 1050) in which he said among other things: "Every witness for defendant company has admitted more than once to me, and in the presence of others, that much that was said was perverted, and more that ought to have been told was left unsaid; further, that if the case was ever opened again, and they had the opportunity their stories told would be different in important effect."

Acting upon a suggestion contained in this letter, the affidavit of Harry A. McLain was procured and is also attached to the petition (Rec., 1045). McLain was employed as a rater by appellee from March, 1901, to July, 1902. He was not called as a witness in the case by either party. Mr. Clancy testified he did not know where McLain was (Rec., 1210).

In this affidavit McLain states what use be made of the Red Bound Books in fixing ratings and corroborates the testimony on behalf of appellants in that regard.

Later counsel for appellants filed a supplemental petition for rehearing, submitting therewith the affidavit of Howard (Rec., 1054) praying that it might be considered by the court in connection with the original petition.

In this affidavit Howard states the use he made of the Red Bound Books in fixing ratings for appellees' book and fully corroborates the testimony on behalf of appellants. This affidavit also states that he asked Mr. Clancy if he was not afraid to use these rating of appellants; to which he replied, "Oh, they can't do anything. They brought a suit against Talcott and failed."

We are aware that Howard having originally testified on behalf of appellees is subject to the suspicion of being now actuated by some selfish or improper motive, but we have failed to discover it, and believe the matter was one of conscience. Having by his former testimony contributed to defeat the ends of justice, he seems by his letter and affidavit to be anxious to make such reparation as he can, even at the risk of being charged with perjury.

When we consider that the witnesses on behalf of appellees who so persistently denied any use of the Red Bound Book except in very rare cases and out of mere curiosity were wholly discredited by the evidence, which demonstrated beyond any doubt that this was not true, and when we also consider the inherent improbability we might say impossibility—that employes so circumstanced and invited to use the ratings in the Red Bound Book refrained from using them; when we consider that they were in the employ of appellees, and dependent upon them for the positions they then held, and when we consider the uniformity of language in which they expressed themselves when examined as to the uses made by them of this book, this testimony of Howard and McLain strikes the mind, not merely

as probable, but as absolutely true. No other reasonable explanation can be made of the admitted facts as to the preparation and accessibility to employes of the Red Bound Book, but that it was intended to be used and was used in the manner and for the purposes stated by Howard.

In view therefore of the circumstances under which appellees' witnesses testified and the doubt thrown upon their testimony by facts uncontroverted, it seems to us the Court of Appeals should at least have called a halt, opened the door and permitted a re-examination of these witnesses, and given appellants the opportunity of investigating this charge made by Howard, which if true meant that appellees had won by perjured testimony and not by the justice of their cause.

VII.

THE DEFENSE.

The defendants in their answers deny all the charges of piracy alleged in the bill. They deny that their reference books were compiled and made up wholly or "in any part whatever" from complainants' books (Rec., p. 22), and go farther than this and allege that the complainants copied many of their capital ratings from defendants' books, and for that reason were not seeking equity with clean hands.

No attempt was made by defendants to prove any act or single instance of piracy on the part of complainants from defendants' book, therefore this

charge was not made in good faith. Their denial of all acts of piracy on their part, and their failure in their answers to acknowledge the use which on the hearing they admit they made of complainants' books is evidence of an evil intent and wrongful purpose which should weigh against them. On the hearing and in the argument, while admitting the use of complainants' books, they claim they made only a lawful use of them for comparison and as a guide to original sources of information, and later that the acts of piracy proved were few in number and of little consequence as compared with the whole book.

Defendants produced much evidence and spent much time in showing the character of their books; how they differed from complainants' books; the system they had for obtaining information, and that their books were highly esteemed by the lumber trade, all of which did not meet the material charges made against them; for whether the arrangement and classification in the books differed or not, whether or not they had an elaborate and complete system of acquiring information and were at great expense in establishing and maintaining it, are aside from the real issues in the case. Did they appropriate a material part of the copyrighted books of complainants and avail themselves of the fruits of complainants' expense and labor without working out the results for themselves?

This is what complainants charge they did, and the evidence of it is clear and convincing. They have built up an extensive and profitable business, but it has been built up by a systematic appropria-

tion of the complainants' property, and the evidence shows that this has been done secretly and wilfully with every effort to hide their work. It is not only by the "ear marks" we have pointed out that their method has been discovered. It is not only by the little slips and carelessness of employes here and there in failing to erase the foot prints that they have been detected, but their whole system and method of procedure is wrong. Their use of appellants' books has been unfair from the beginning. The manner in which they obtained possession of appellants' books, the transferring of appellants' names and ratings to the Red Bound Book, the placing of that book in the possession of their own raters, while they were engaged in the work of fixing the ratings in appellees' books, and the sending of appellants' ratings to their correspondents on their revision sheets, all indicate a deliberate purpose to appropriate appellants' property, and this is followed by an actual appropriation of a very material part of appellants' property.

They have pursued this system so long without interference that they seem to have convinced themselves that they have acquired a prescriptive right to make use of appellants' books in the manner they did.

Their defenses relied upon in the Circuit Court were:

1. That they had the right to use appellants' book as a guide to original sources.

2. That the part taken was not material and appellants were not injured thereby.

3. That the objectionable matter formed but a small part of defendants' publication and the dam-

ages to appellants compared with that which would result to appellees from an injunction is so small that the court ought not to grant an injunction.

4. The appellants are not acting in good faith but were instigated by the Foster Mercantile Agency to bring this suit.

In answer to these several defenses we reply:

1st. That the evidence shows appellees did more than use appellants' books as a guide to original sources. They made a complete transcript of certain parts of them, including the financial ratings as well as names. The ratings certainly were not necessary as a guide to original sources.

They placed the Red Bound Books containing appellants' ratings in the hands of their employes engaged in fixing their own ratings with such instructions as gave them liberty to refer to them for any purpose they saw fit.

And they put their ratings in some cases on their revision sheets sent out to their correspondents for reports.

2nd. The parts taken were material parts of appellants' book. If they appropriated appellants' ratings or furnished them to their own raters to use in fixing these ratings, and these raters so used them either by copying them literally, or with slight and colorable changes only, they appropriated the most valuable part of appellants' books. And it having been demonstrated that in some cases they did this, the presumption is they did it in other cases when they had the opportunity. Appellants were necessarily injured by this appropriation. Appellees were competitors of appellants in the lum-

ber trade. Their book was intended to supplant and must necessarily supplant appellants' book under this system of procedure.

3rd. While the damage to appellee would be great if their work is enjoined, yet as the consequences flow from their own deliberate wrongful conduct, they are not in a position to invoke the clemency of a court of equity.

The injury to appellants cannot be said to be small. Appellees have been for years attempting to supplant appellants in the lumber trade, and the fact that they include in their books items of information not contained in appellants' book is no justification. This simply aggravates the offense. For if it be true that their subscribers in the lumber trade can get the benefit of Dun & Co.'s ratings with the addition of other valuable information in the same book it would be natural to suppose they would have no use for Dun & Co.'s book. And if it be understood by their subscribers that appellees are in the habit of consulting Dun & Co.'s books and appropriating their ratings or basing their own ratings upon Dun & Co.'s, we apprehend that to the average subscriber it would be a matter of indifference, whether or not this was fairly and honestly done or not.

It is therefore of the utmost importance to appellants that the system adopted by appellees in making up their editions and fixing their ratings be condemned as unlawful. It is a system which suggests such possibilities of "unfair use" and offers such temptations to appropriate that without any evidence whatever of actual appropriation, appellants would be justified in believing and charg-

ing that appellees were guilty of pirating and the court would be justified in presuming that they had done what would naturally be done by others under the same circumstances.

As to the good faith of appellants in this proceeding, we might rest upon the principle of law that the motive of the plaintiff in bringing suit is immaterial. The question is: Is his cause of action meritorious?

Whatever motive the Foster Mercantile Agency might have had in calling the attention of appellants to evidence of infringement, it cannot affect the good faith of appellants, if they believed the facts to be as stated. Nor would it militate against appellants that their success might redound to the benefit of the Foster Mercantile Agency, if that were true.

But the good faith of appellants is demonstrated by the evidence produced. If the charges made in the bill are established by the evidence, it is clear that appellants have suffered from the wrongful acts of appellees and that the injury done to them is a serious and continuing one, which has already resulted in loss and damage to them in their business and which will in the future inflict still greater loss if appellees are permitted to continue using appellants' books in the manner pointed out.

THOMAS M. HOYNE,
JOHN O'CONNOR,
CHAS. K. OFFIELD,
HENRY S. TOWLE,
Solicitors for Appellants.

CHAS. K. OFFIELD,
THOS. M. HOYNE,
Of Counsel.

Office Supreme Court, U. S.
FILED.
JAN 24 1908
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1907.

No. 138.

MARY B. DUN, ROBERT DUN DOUGLASS, FRANCIS L. MINTON, AND WALTER D. BUCHANAN, EXECUTORS AND TRUSTEES UNDER THE WILL OF ROBERT G. DUN, DECEASED, APPELLANTS,

vs.

THE LUMBERMEN'S CREDIT ASSOCIATION, WILLIAM CLANCY, AND BURTON W. STADDEN, APPELLEES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

SUPPLEMENTAL BRIEF AND ARGUMENT FOR APPELLANTS.

THOS. M. HOYNE,
JOHN O'CONNOR,
CHARLES K. OFFIELD,
HENRY S. TOWLE,
Counsel for Appellants.

(20,429.)

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1907.

No. 138.

DUN

vs.

LUMBERMEN'S CREDIT ASSOCIATION.

Supplemental Brief and Argument for Appellants.

Counsel for appellees in their brief filed in this case make the point that "the Dun book is not within the protection of the copyright law" (page 161 of brief).

The answers deny that appellants' books were copyrighted, but do not allege that they were not copyrightable.

This point was not made or argued by appellees' counsel in their brief filed in the Circuit Court of Appeals, and therefore is not referred to in our original brief filed in this court.

This point seems to have been suggested to counsel by our brief, to which they refer in support of their argument, because we claim that appellants' books are not literary productions, nor historical nor scientific in their nature, but were prepared and published for temporary use, only counsel jump to the conclusion that they served no useful purpose and are not within the provisions of the copyright law.

While it is true the books in question are not literary productions, nor historical nor in a technical sense scientific in their character, and were intended to furnish information for temporary use only, it does not follow that they did not furnish useful knowledge and were not the fruits of intellectual labor.

They were not intended to advance or develop any special science or art, and posterity will not be interested in them. They did not therefore carry with them an implied consent to use them as a stepping stone in the advance and development of some particular science or art. But science in its broadest sense is knowledge, and if they were the result of intellectual labor and furnished any useful knowledge they were in that sense scientific, and tended to promote the progress of science, certainly as much as a dressmaker chart or a photograph.

Science is defined to be "knowledge, comprehension, or understanding of facts or principles;" also as "knowledge regarding any special group of objects coördinated, arranged, and systematized; what is known concerning a subject systematically arranged; a branch of knowledge, as the science of botany, of astronomy, etc."

Century Dictionary.

There can be no doubt that the framers of the Constitution intended to use the word "science" in its broadest sense, and this has been the construction given to it by the courts of this country generally. If the books in question had related to a particular science, such as botany or astronomy, there would be reason for the application of the rule that there is an implied consent by the author that a subsequent author may make a liberal use of the copyrighted book for the purpose of advancing or developing a particular science; but our argument was that such cases do not apply to a book, which while it furnishes useful and valuable information, and in that sense tends to promote science (or knowledge), yet is not a scientific work in the sense that it is an addition to the knowledge relating to "a special group of

objects," and therefore progressive in its nature, such as botany or astronomy.

The courts have given a very liberal construction to the copyright laws. Their purpose is to protect the citizen in the enjoyment of the fruits of his intellectual labor, and if he has produced something of value to the community or to a class of the community he is protected.

Myers *vs.* Callaghan, 5 Fed. Rep., 736.
Myers *vs.* Callaghan, 20 Fed. Rep., 441.
Werkmeister *vs.* American Lithographing Co., 142 Fed. Rep., 827.

"The material inquiry then is not whether the production has literary or scientific merit, but whether it may be regarded as a material addition to useful knowledge, a source of general information. If it be of substantial importance and have a material value in this respect, the law does not inquire into the degree of its usefulness or of its merits. Whether one production is more or less useful, meritorious or popular than another is no concern to the court which exercises no function of criticism."

Drone on Copyrights, page 210.

That the books in question collect, arrange, and publish facts and conclusions therefrom that serve a temporary purpose only does not prove that they are not useful and do not furnish a material addition to useful knowledge.

It has long been settled, both in this country and England, that a directory, a calendar, a catalogue of names, a compilation of statistics, a table of figures, a collection of legal forms, an abstract of title to lands, although devoid of literary merit and of temporary use only, are subjects of copyright.

Compilations, although all the materials may be common to all writers, may be copyrighted.

Green *vs.* Bishop, 1 Cliff., 186.
Bullinger *vs.* Mackey, 15 Blatchf., 550.
Hanson *vs.* Jaccard Jewelry Co., 32 Fed. Rep., 202.
Ladd *vs.* Oxnard, 75 Fed. Rep., 703.

A chart on a single sheet containing diagrams representing a system of taking measures for and cutting women's dresses, with instructions for its use, was held to be a "book" within the copyright law.

Drury *vs.* Ewing, 1 Bond, 540.

Dramatic compositions and stage contrivances depending largely upon what was seen, irrespective of the dialogue, have been entitled to protection.

Daly *vs.* Webster, 56 Fed. Rep., 483.

Even playing cards have been held to be within the law.

Richardson *vs.* Miller, 15 Alb. L. J., 340; 20 Fed. Cas., No. 11791.

Also a compilation containing the names of certain racehorses, the races in which they have taken part, and the jockeys who have ridden them, and other details.

Egbert *vs.* Greenberg, 100 Fed. Rep., 447.

In one sense these compilations do not tend to promote any science or art, but they are the result of intellectual labor.

This question is not entirely new in this court. As early as 1832 Chief Justice Marshall, in referring to this subject, declared it to be "the settled purpose of the United States" to confer on the authors of useful inventions an exclusive right in their inventions for the time mentioned in their patent, and that the laws passed to give effect to this purpose ought to be construed in the spirit in which they were made.

Grant *vs.* Raymond, 6 Pet., 218.

And in the Trade-mark Cases, 100 U. S., 82, Mr. Justice Miller, while holding that a trade-mark is not a *writing* within the meaning of the Constitution, expresses the opinion that "the writings which are to be protected are *the*

fruits of intellectual labor embodied in the form of books, prints, engravings, and the like."

And in Higgins *vs.* Keuffel, 140 U. S., 428, Mr. Justice Field, referring to this clause of the Constitution, says: "This provision evidently has reference only to such writings and discoveries as are the result of intellectual labor," and refers with approval to the language of Justice Miller in the Trade-mark Cases above quoted.

In the case of American Tobacco Co. *vs.* Werkmeister, in which the opinion of this court was filed December 2, 1907, this court again discusses the nature of the property in copyright which it is the object of the statutes of the United States to protect, and what is there said applies as well to the Constitution as to the statutes. The court adopts the definition of Bouvier as to the meaning of the word "copyright," in which he says: "The foundation of all rights of this description is the natural dominion which every one has over his own ideas."

The court again declares that in construing a statute "we are not always confined to a literal reading, and may consider its objects and purpose, the things with which it is dealing, and the condition of affairs which led to its enactment so as to effectuate rather than destroy the spirit and force of the law which the legislature intended to enact."

The same rule of construction applies to the Constitution. In view of the well-known state of the English law at the time the Constitution was adopted, it cannot be doubted that the framers of that instrument had in mind that law, and intended to delegate to Congress the power to enact such laws as it deemed proper or necessary to protect the author and inventor in the enjoyment of "the fruits of his intellectual labor." The language of this clause of the Constitution should therefore be given a most liberal construction to effectuate this purpose.

In Burrow-Giles Lithographing Co. *vs.* Sarony, 111 U. S., page 53, it was held that it was within the constitutional

power of Congress to confer upon the author, inventor, designer, or proprietor of a photograph the right to a copyright.

In discussing this provision and the acts of Congress passed by virtue thereof Mr. Justice Miller says:

"Nor is it to be supposed that the framers of the Constitution did not understand the nature of copyright and the objects to which it was commonly applied, for copyright, as the exclusive right of a man to the production of his own genius or intellect, existed in England at that time, and the contest in the English courts, finally decided by a very close vote in the House of Lords, whether the statute of Anne, chap. 19, which authorized copyright for a limited time, was a restraint to that extent on the common law or not, was then recent. It had attracted much attention, as the judgment of the King's Bench, delivered by Lord Mansfield, holding it was not such a restraint, in *Miller v. Taylor*, 4 Burrows, 2303, decided in 1769, was overruled on appeal in the House of Lords in 1774 (*Ibid.*, 2408). In this and other cases the whole question of the exclusive right to literary and intellectual productions had been freely discussed.

"We entertain no doubt that the Constitution is broad enough to cover an act authorizing copyright of photographs, so far as they are representatives of original intellectual conceptions of the author."

Any other than a liberal construction of the Constitution and the acts of Congress would make the courts censors and impose upon them the duty to determine in every case whether or not the particular publication tended "to promote the progress" of some science or useful art, and require of them, if it did not, to condemn it. This was not the purpose of the Constitution, and the courts have not so construed it.

In the recent case of Hartford Printing Company *vs.* Hartford Directory and Publishing Company, 146 Fed. Rep., 332, Judge Platt, in the District Court, seems to have had some doubt in his own mind whether a mere directory, containing simply names and addresses, was within the purview of the copyright law, but he says:

"In so far as he may have used his brains to get up an artistic book in the way of grading, classifying, and setting forth the facts which it contains, there would be reason in his claim, but in so far as he merely records accurately the names of residents with their occupations and where to find them at home and in their business, it is impossible to discover wherein the useful arts and sciences are promoted. The labor involved therein is purely mechanical, and to protect the copyright affords a certain measure of monopoly in the right to make such a use of labor and money. Copyrights upon directories have, however, been cared for by the courts so many times that it would be presumptious for me, without solicitation, to attempt a practical expression of my own views. The complainant's lawful copyright is therefore assumed, and, sternly repressing such tendencies as these suggestions would lead us toward, it will be my purpose to decide the matter upon the case presented."

There is a material difference between the reference books of Dun and Company and a directory. They not only classify and arrange the names, but, in addition thereto, furnish financial ratings which are the result of intellectual labor. They are the conclusions drawn from facts.

We do not understand that it is essential to the copyright of a book that it should be such as shall interest or benefit the entire community. It may cover a very narrow subject and interest a very small percentage of the community, as most copyright books do, but if it is not vicious or immoral it still may contribute to the public good.

Nor does the fact that the book is sold only to regular subscribers prove that it is not of benefit to the public. Many copyrighted books are sold by subscription only, and we have never heard this made a ground of objection to the validity of the copyright.

The fact that the publisher of a book is inspired by no higher incentive than the expectation of the profit to be derived therefrom does not place his book beyond the pale of the law. Most books are produced with a view to profit, even scientific books. If they are the fruit of mental labor the author, both by the letter and the spirit of the law, should

be protected in his property. The very object of the law is to encourage the production of useful books and inventions by assuring to the author or inventor a pecuniary reward for his labor.

We fail to see anything in the objection made by counsel that Dun and Company do not sell their books, but only lease them. The law gives the author the sole privilege of printing, publishing, and vending his copyrighted book, but there is nothing in the law that requires him to print, publish, or vend it. Having given him the sole right, he is wisely left to dispose of his property in such manner as he sees fit. The act has no provision against a scarcity of editions or exorbitancy of prices. As Chancellor Kent says, "It leaves authors to regulate in their discretion the number and price of their books, calculating (and probably very correctly) that the interest an author has in a rapid and exclusive sale of his work will be sufficient to keep the price reasonable and the market well supplied." The act, though taken generally from the English statute, differs from it in this respect as well as in several others (Kent Com., 2, 375). The fact that Congress saw fit to omit from the act this important provision of the English statute indicates very clearly that it did not intend to impose upon the author any conditions as to when and how he should publish and sell his work. In this respect the policy of our law is entirely different from that of the English statute.

Respectfully submitted,

THOS. M. HOYNE,
JOHN O'CONNOR,
CHAS. K. OFFIELD,
HENRY S. TOWLE,
Solicitors for Appellants.

CHAS. K. OFFIELD,
THOS. M. HOYNE,
Of Counsel.

Office Supreme Court, U. S.
FILED
JAN 7 1908
JAMES H. MCKENNEY,
Clerk.

No. 138.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1907.

MARY B. DUN, ROBERT DUN DOUGLASS, FRANCIS L. MINTON and WALTER D. BUCHANAN, Executors and Trustees under the Will of ROBERT G. DUN, deceased,

Appellants,

vs

THE LUMBERMEN'S CREDIT ASSOCIATION, WILLIAM CLANCY and BURTON W. STADDEN,

Appellees.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, THERE HEARD ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, NORTHERN DIVISION.

HONORABLE CHRISTIAN C. KOHLSAAT, JUDGE PRESIDING.

BRIEF AND ARGUMENT FOR APPELLEES.

FRED H. ATWOOD,
FRANK B. PEASE,
CHARLES O. LOUCKS,

ATTORNEYS FOR APPELLEES.

BARNARD & MILLER PRINT, CHICAGO.

INDEX TO BRIEF OF APPELLEES.

	PAGE
STATEMENT OF CASE	1–27
The Pleadings, Orders, etc	1–11
The Uncontroverted Facts	11–20
The Controverted Facts	20–21
Erroneous and Misleading Statements in Appellant's Brief	21–27
Brief of Argument	28–33
PART I.	
SOURCES OF DEFENDANTS' INFORMATION AND EFFORTS MADE TO SECURE ORIGINAL INFORMATION	34–47
Various Sources of Information Enumerated	34
Testimony of Miss Moore	35
Testimony of Mr. Ferguson and Mr. Stadden	36
Review of Testimony of William Ferguson, an Employe of the Foster Agency, and a Witness Hostile to Defendant, as to Defendants' Sources of Information	36–39
Testimony of Francis H. Moore, Complainant's Witness, as to Methods used by Defendants in Securing Original Information	39–40
Testimony of Elmer W. Wheaton as to Methods Used in Securing Original Information	41
Testimony of Heber Fuller as to Methods Used in Securing Original Information	41–43

PAGE

Testimony of A. L. Kneffler as to Methods Used in Securing Original Information... 43
Testimony of Philip C. Howard as to Methods Employed by Defendants in Securing Original Information and Testimony of Mr. Stadden and Mr. Clancy..... 43–44
Summary 44–47

PART II.

COMPARISON OF R. G. DUN BOOK AND L. C. A. BOOK 48–94
Extracts from Authorities to the Effect that Piracy Should be Shown by a Comparison of the Two Books..... 48–51
Results of Mr. Stein's Comparison of Dun's September, '01, Book and L. C. A. '02 Book 51–55
Mr. Tuttle's Comparison of the Two Books. 55–56
Complainants' Comparison of Defendants' July, '01, Book and Complainants' March, '01, Book 56–58
Comments Upon Exhibits Introduced in Evidence with Reference to Comparison of Two Books 58–61
Comments Upon Depositions Taken by Complainants in Reference to Names Claimed to Have been Pirated from Complainants' Book 61–78
Comments on 18 Names and Ratings which Appellants Have Mentioned out of the 73 Selected by Their Experts..... 78–90
Evidence Showing Superiority of Defendants' Information Over Dun's..... 90–94

Part III.

PAGE

Difference Between L. C. A. Reference Book and R. G. Dun Book, and the Different Purposes which the Two Books Answered in the Lumber and Kindred Trades .....

Testimony of Prominent Lumbermen, etc., as to the Differences: W. Scott Keith, E. L. Roberts, Albert W. True, C. F. Wiehe, C. J. Pope, George H. Holt, Edward W. Hooper, James E. Defebaugh, A. S. Badger, W. G. Kimball..... 94–111

Part IV.

Law Pertaining to the Case and Extracts from Legal Authorities.....111–132

Part V.

Summary of Legitimate Use Made by Defendants of Complainants' Book. Use of Red Bound Book.....132–161

Summary of Use of Red and Black Bound Books 133–138

Testimony of Elmer W. Wheaton.....138–140

Testimony of Heber Fuller.....140–142

Testimony of A. L. Kneffler.....142–145

Testimony of Philip C. Howard.....145–146

Testimony of William Clancy.....146–147

Testimony of Burton W. Stadden.....147–148

Testimony of William E. Ferguson (a Hostile Witness) 148–152

Comments on Introduction of Wright Affidavit 152–153

PAGE

The Dun Book Not Obtained Surreptitiously or Used Secretly 153–155

The Revision Sheets Sent to Correspondents Did Not Contain Dun's Ratings and were Not Mere Verification Slips.....155–161

PART VI.

THE DUN BOOK IS NOT COPYRIGHTABLE.....161–169

PART VII.

LACK OF GOOD FAITH ON PART OF COMPLAINANTS IN INSTITUTING THIS SUIT, AND ANSWERS TO CERTAIN CHARGES MADE IN APPELLANTS' BRIEF 169–175

PART VIII.

THE COURT OF APPEALS DID NOT ERR IN DENYING THE PETITIONS FOR REHEARING, ETC..176–182

Conclusion 183–185

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1907.

MARY B. DUN, ROBERT DUN DOUGLASS, FRANCIS L. MINTON and WALTER D. BUCHANAN, Executors and Trustees under the Will of ROBERT G. DUN, deceased,
Appellants,

vs.

THE LUMBERMEN'S CREDIT ASSOCIATION, WILLIAM CLANCY and BURTON W. STADDEN,
Appellees.

APPEAL FROM UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SEVENTH CIRCUIT, THERE HEARD ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, NORTHERN DIVISION.

HONORABLE CHRISTIAN C. KOHLSAAT, JUDGE PRESIDING.

BRIEF AND ARGUMENT FOR APPELLEES.

STATEMENT OF THE CASE.

This is a bill, filed January 17, 1902, in the Circuit Court of the United States for the Northern District of Illinois, Northern Division, by appellants, who are publishers of a general mercantile reference book covering all trades, against appellees, who publish a special mercantile reference book pertaining to the lumber trade, to restrain an alleged infringement by the latter of the former's copyrighted reference books, and for an accounting. The de-

fendants filed an answer, hereinafter set forth, denying the material allegations of the bill.

On January 25, 1902, a motion for a temporary restraining order was denied by the court, and a motion for a temporary injunction was referred to a master in chancery. (Rec., 45.)

From January 29, 1902, until July 3, 1902, testimony was taken before the master in chancery and various proceedings were had upon the motion for a temporary injunction.

On July 3, 1902, the complainants voluntarily withdrew their motion for a temporary injunction. (Rec., 69.)

October 8, 1902, the case was referred to Marshall E. Sampsell, special examiner to take testimony of resident witnesses. (Rec., 70.)

In October and November, 1902, depositions were taken by complainants at twelve different places, located in eight different states.

March 10, 1904, the testimony was filed by the special examiner.

The case was heard by Judge Kohlsaat on the testimony taken by the master on the reference of the motion for a preliminary injunction; the testimony reported by the special examiner; depositions of non-resident witnesses; and 619 exhibits introduced in evidence.

January 9, 1905, a decree was entered, finding that the allegations of the bill of complaint had not been proved, and dismissing the bill for want of equity.

The opinion of Judge Kohlsaat is set forth on pages 1021-1023 of the record.

The appellants appealed to the court of appeals in and for the Seventh Circuit and January 9, 1906, that court affirmed the decree of the Circuit Court.

The opinion of the Court of Appeals by Baker, J., is set forth on pages 1043 and 1044 of the record.

February 8, 1906, appellants filed a petition for a rehearing and on March 1, 1906, a supplemental petition for rehearing, which were, on the 10th day of April, 1906, denied. Appellants then prayed an appeal to this court.

The Pleadings.

The bill in this case was filed January 17, 1902, to restrain the defendants from publishing, printing and vending any of the matter contained in the copyrighted March, July or September, 1901, edition of complainants' reference book. The bill also prays that an account may be taken of the editions alleged to be infringements, which have been sold, and the defendants be decreed to pay over the proceeds of such sales to the complainants.

The bill charges (Rec., 2-17) that the July, 1901, edition of defendants' book was made up wholly or in great part from information contained in the March, 1901, reference book published by the complainants, without making original investigation; that the January, 1902, edition of defendants' book, then in the hands of the printer, was made up wholly or in great part from the information contained in the copyrighted March, July and September, 1901, editions of complainants' book.

The answers of the defendants, filed April 12

and May 10, 1902 (Rec., 33-42), deny that William Clancy ever compiled and made up the reference books of the Lumber Mercantile Association, the predecessor of the Lumberman's Credit Association, or any of them, wholly or in great part, or in any part whatever, from the information contained in the reference books previously issued by the predecessors of complainants, or without any original investigations or inquiries for the information necessary to the composing, compiling and publishing of such a book.

They deny that the Lumbermen's Credit Association, in publishing its reference books, or any of them, or that William Clancy or Burton W. Stadden have at any time pirated from the reference books of the complainants or their predecessors.

They deny that the defendant association has compiled and made up the said reference books, or any of them, wholly or in great part, or in any part whatever, from the information contained in the reference books previously published by the complainants and their predecessors, or without making any original investigations or inquiries necessary to the composing, compiling and publishing of such a book.

They deny that the edition of the said reference book printed and published by the said Lumbermen's Credit Association in July, 1901, was compiled and made up wholly or in great part or in any part whatever, from the information contained in the March, 1901, edition, or any other edition, of the reference books of the complainants or their predecessors, without making any original investigations or inquiries for the information necessary to the composing, compiling and publishing of such

a book; or that the January, 1902, edition of the reference book of the Lumbermen's Credit Association was wholly or in great part, or in any part whatever, compiled and made up from the information contained in the March, July and September, 1901, editions of the reference books issued by the complainants, or without making any original investigations or inquiries for the information necessary to the composing, compiling and publishing of such a book.

The answers further state that the reference book of the Lumbermen's Credit Association contains a key composed of certain letters and figures used to indicate the financial worth and the habits of pay and other information affecting the credit of persons, firms and corporations named therein, and that in some instances the same letters are used which are used in complainants' reference book as a part of their key; but that in no instance does the same letter indicate the same amount, and in several instances the same letter indicates a very different amount of capital rating.

They deny that in compiling the July, 1901, reference book of the Lumbermen's Credit Association in some instances names of towns, and in other instances names and ratings of persons, firms and corporations were copied from the complainants' March, 1901, reference book, or July, 1901, book, or that it used the ratings shown in complainants' March, 1901, book, in fixing the ratings in its July, 1901, book, or that the ratings shown in the complainants' March, 1901, book were inserted in its July, 1901, book, with slight and colorable changes or otherwise, or that defendants intended to copy or did copy ratings from the complainants' March, 1901, book.

They further deny that in compiling the January, 1902, edition of the Lumbermen's Credit Association reference book it copied in some instances names of towns and in others genuine and fictitious names and ratings of persons, firms and corporations from the complainants' 1901 reference books, or that in other instances the defendants used the ratings in complainants' September, 1901, book in fixing the ratings of the January, 1902, book of the Lumbermen's Credit Association, or that they inserted the same in its January, 1902, book, with slight and colorable changes or otherwise, or that they intended to or did copy the ratings appearing in complainants' September, 1901, book, or that they copied letters and figures therefrom, thereby giving different ratings than complainants.

They deny that the defendants, or any of them, have copied the names of towns, persons, firms or corporations, letters, figures or ratings into said reference books, or any of them, from the complainants' reference book or books, or that they have done any wrongful act in connection with the printing and publishing of said reference books, or any of them.

The answers further set forth that the Lumbermen's Credit Association is a special mercantile agency, devoted to the lumber and kindred trades; that the business now carried on by said association was established twenty-six years ago; that said association collects, collates and preserves information concerning the financial worth, habits of pay and methods of doing business of manufacturers and dealers in lumber and kindred trades throughout the United States and Manitoba; that said association has its correspondents or repre-

sentatives, numbering many thousands, in all the principal cities and towns in the United States and Manitoba, from whom information and reports are received; that it also receives statements from manufacturers, dealers and users of lumber and kindred lines, and that it also has several travelers, soliciting business and gathering information; that during the twenty-six years aforesaid there has been gathered, collated and preserved at a great expense more than one million reports concerning the financial worth, habits of pay and business methods of persons, firms and corporations engaged in the lumber business and kindred lines in the United States and Manitoba; that said reports and information, which it now has on file, are of great value and worth to said association; that said association has from twenty-six to thirty-five employes and occupies over 1,500 square feet of office space; that it receives on the average from 300 to 500 letters daily; that all of the information so gathered and preserved by said association is confidential and is gathered and preserved for the purpose of furnishing confidential reports to its subscribers.

It is further stated that another means of furnishing said information to its subscribers is a reference book, which is published by said association semi-annually in January and July of each year; that said information is compiled in said reference books by means of certain letters, figures and characters commonly called a "key," adopted and used in the said business since 1876.

It is also set forth that another source of original information is by means of oral and written reports from its subscribers as to their dealing

and experience with the different lumber users throughout the United States and Manitoba; that still another source of information is through its collection department, which handles a very large number of claims, through which it comes directly in contact with a large number of lumber users and dealers, and gathers very much valuable information as to their habits of pay and methods of doing business; that still another source of information is through the trade journals, periodicals, law bulletins, daily papers and five or six clipping bureaus; that all of the information thus gathered by said association is collated and preserved by it in its records and files, except where the same is casually lost or mislaid or through lapse of time has ceased to be looked after or cared for by the defendants as being too old to be of any value.

It is further stated that the reference book published by said association contains upwards of sixty thousand names of persons, firms and corporations engaged in the lumber and associated trades throughout the United States and Manitoba, and that a large majority of such names have appeared in the reference books issued by the defendant association for eight or ten years, and not more than 10 per cent. of the names and ratings are changed in each revision of said reference book; that said book is revised and published semi-annually in January and July of each year; that for each revision of said book thirty to forty thousand inquiries are sent to correspondents, representatives, subscribers and travelers on blanks especially prepared for that purpose to each and every town revised, and the information received in reply thereto is used in connection with the verbal and written answers to

inquiries and information previously received and on file, in fixing the ratings contained in said reference book.

The answers further point out the distinction that the reference book issued by said association is confined to the lumber and associated trades in the United States and the Province of Manitoba, while the reference book issued by the complainants embraces all kinds and classes of business and covers the United States, Canada, British Provinces and North America; that the general scope and classification of the reference book of the defendant association is entirely different from the reference book issued by complainants; that the defendants' reference book is devoted entirely to the lumber and associated trades, and is compiled and arranged especially to meet the needs and requirements of the persons, firms and corporations manufacturing and dealing in lumber and kindred lines; that the defendants' reference books contain many names and ratings of lumber dealers and manufacturers not contained in complainants' reference books; that the defendants' book gives the name of a bank and attorney under each town, which complainants do not give in their reference book. That the defendants' book also contains a shipping guide, express directory, attorneys' directory, population of the different cities and towns, freight rate columns, marginal state index, and a blank margin for corrections and notations, which complainants' reference book does not contain; that the arrangement and classification of lumber dealers in defendants' reference book is entirely different from complainants' reference book; that the classification in defendants' reference book shows

who are manufacturers, wholesale and retail dealers, and whether they manufacture and deal in other than pine lumber, and in cases where the person, firm or corporation has a number of country yards, defendants' reference book gives the location of the purchasing department, none of which information is contained in the reference book issued by the complainants.

The answers further set forth that in some instances the same letters are used in defendants' key that complainants use in their key, but that in no instance does the same letter indicate the same amount which the said person, firm or corporation are reputed to be worth, and that there is a very wide difference in the amounts represented by the same letters used in complainants' and defendants' key; that defendants have no letter indicating an amount above $100,000, while complainants' key indicates amounts up to one million dollars; that the meaning of defendants' key and the information intended to be conveyed thereby, is entirely different from complainants' key, and that in no instance does the same letter or figure indicate or convey the same information; that the key to the reference book of the Lumbermen's Credit Association indicate the habits of pay as follows, viz.:

"Prompt Pay,"
"Medium Pay,"
"Slow Pay,"
"Very Slow Pay,"

while complainants' key indicates a *limit of credit* which it is supposed may be extended to persons, firms or corporations; that defendants' key indicates also all manner of delinquencies, insolvencies, incumbrances, transfers, judgments, bills of

sale, chattel mortgages, complaints, etc., in all 113 specific items of information, indicating the business standing or condition of persons, firms and corporations appearing in said reference book, while complainants' key refers to only 19 items.

THE FACTS.

THE UNCONTROVERTED FACTS IN THIS CASE ARE AS FOLLOWS.

The complainants are the publishers of a reference book giving the names, business, occupation, a capital rating and a credit rating of different persons, firms and corporations engaged in business throughout the United States, Canada and British Provinces. (Rec., 3.) They published three separate editions of their book in March, July and September, 1901, and copyrighted the same. (Rec., 5 and 6.) These editions covered all the different kinds of mercantile business and contained 1,460,000 names. (Rec., 142.)

The defendant and its predecessors have, for THIRTY-ONE YEARS, been engaged in publishing a reference book (Rec., 757), giving the financial worth, habits of pay and other information of manufacturers and dealers in lumber and kindred trades throughout the United States and Manitoba. (Rec., 758-761.) The July edition, 1901, and January edition, 1902, contained approximately 60,000 names. (Rec., 770.) The defendant, for years past, has employed a large office force of from twenty-five to thirty-five persons. (Rec., 758.) It paid out, in 1901, over $40,000 for expenses, and $7,340

of this was for postage. Its mail averaged from 300 to 500 pieces per day (Rec., 758), and at times reached 2,000 a day. (Rec., 804.) It receives a large number of newspapers, magazines, trade journals and bulletins, from which it obtains information for its work (Rec., 804), and it has on hand over 1,000,000 reports and replies to inquiries relating to the names in its publication. (Rec., 767.)

This information was gathered (Rec., 762-763, 794-795) by obtaining reports direct from correspondents located in the various cities and towns in the United States and Manitoba; by personal statements from dealers and manufacturers, showing their financial standing; and by securing information from the trade from whom they make their purchases, as to the manner in which they meet their obligations and treat their creditors. The defendant association has correspondents in all the towns and cities covered by its reference book. The association and its predecessors have been gathering information in this manner for THIRTY-ONE YEARS. In addition to the sources of information mentioned, five clipping bureaus furnish it 100 items of information a day. (Rec., 796.) It takes twenty different publications (Rec., 804-805), and has a collection department, which makes collections all over the United States. Reports from this department are kept on file. (Rec., 795.) A large volume of information is obtained from banks (Rec., 794), and a great deal of voluntary information is received from subscribers regarding their experience with their customers as to the latter's habits of pay, methods of doing business and financial worth. The defendant association has what is called a weekly report from its members (Rec.,

794), delinquent reports, law bulletins and trade agencies from which information is received. It has traveling men who go about the country continually and revise information in each town and city they visit. (Rec., 795.) They also make investigation as to new names, giving them such rating as they are entitled to. The defendant association also has a list furnished by the Lumber Dealers' Associations of the different states. It uses country yard lists (Rec., 795), furnished it regularly by concerns which operate country yards, or a number of yards at different points. The railroad companies furnish a list of yards and manufacturers located on their lines. When references are given in the personal statement, the defendant association writes the parties referred to and gets information regarding their experience with their customer.

The defendant association uses twenty-six blank forms in its business. These consist principally of the following (Rec., 797-800):

1. Revision blank, sent to a correspondent in each town and city. It contains the names and ratings of all the parties carried in the previous book, together with any new names.

2. Personal correspondent blank, sent to correspondent when a report in detail is desired.

3. Town blank. On this is pasted the town as it appeared in the last reference book. It is sent to the correspondent, and in many cases to dealers and manufacturers in the same town, asking them to check over the list and make corrections which should be made in either rating or manner of pay or method of doing business, and to insert new names.

4. SPECIAL CORRESPONDENT REPORT BLANK, sent in reference to corporations.

5. PERSONAL STATEMENT BLANK, sent to party from whom a personal statement of his financial standing is desired.

6. PERSONAL STATEMENT BLANK FOR CORPORATIONS.

7. TRACER, which is sent out every other week with the correction sheet to each member of the association. It contains names of parties upon whom information is desired.

8. BLANK used for obtaining information in small towns where the correspondent has not replied promptly.

9. CORRESPONDENT BLANK for obtaining information on new corporations.

10. BUILDING NEW MILL BLANK, sent for information in detail where a new mill is being built.

11. BANK REFERENCE BLANK, sent to banks which have been given as references.

12. TRADE REFERENCE BLANK, sent to obtain information from the trade upon references given by the party in making a personal statement.

13. SALE OR DISSOLUTION BLANK, sent to correspondent where advice has been received that the concern has sold out or a dissolution occurred.

14. SALE OR DISSOLUTION BLANK, sent to party who has sold out, asking for particulars.

15. FIRE BLANK, sent to a party who has been burned out, asking for information in detail.

16. FIRE BLANK SENT TO CORRESPONDENT.

17. DEATH BLANK SENT TO CORRESPONDENT.

18. SUIT BLANK, sent to correspondent asking for particulars regarding suit brought.

19. ASSIGNMENT OR FAILURE BLANK, sent to correspondent regarding assignment or failure.

20. MORTGAGE OR DEED BLANK, sent for information regarding mortgages and deeds.

21. SUBSCRIBERS' WEEKLY REPORT SHEETS AND DELINQUENT BLANKS, used by subscribers in making reports on delinquents and corrections in financial ratings which they contract to make.

It employs traveling men, lumber dealers, lawyers, justices of the peace, mercantile associations and local reporting agencies, in obtaining information for its publication. (See Rec., 762-763, 819, 637, 676, 696, 468, 658.)

The defendant association prepared its book in the following manner:

It kept in its office an office tickler. (Rec., 679, 829, 467, 769, 763.) This consisted of the last previous edition of defendants' book, and in it, from day to day, were noted changes in reference to the persons named in that book, and new names were being constantly added from information derived from the various sources above enumerated. (Rec., 467, 769, 763.) The revision work lasted for three months before the issuance of the book. (Rec., 469.) About one-half of the United States was revised at each issue, the entire territory thus being revised once a year. (Rec., 465.) The changes in each revision were about ten per cent. (Rec., 764.) The revisers had at their disposal all the information in the office, including the office tickler and more than one million reports. (Rec., 470.) They were also given the black bound book. (Rec., 766.) The black bound book was used for the printer's copy and consisted of a manilla covered pamphlet bound with black tape. (Rec., 675.)

There was one black bound book for each state that was being revised. The black bound book was a *fac-simile* copy of that particular state as it appeared in the reference book of the defendant association of the last previous edition. The pages of the last edition were cut out according to towns and were pasted upon blank sheets in the black bound book, leaving abundance of room on each side for changes or corrections. This book contained, aside from the print of the last edition, the new names that had been acquired in the regular course of business since the last previous edition, and taken from the office tickler. (Rec., 675-685.) Eight men were employed in the home office in rerating on the revision work. (Rec., 768, 465.) The revisers also had access to the red bound book. (Rec., 808-810.) The latter book was similar to the black bound book or printer's copy except that it was bound with red tape and except that before being used by the revisers it had been sent to an addressing and circularizing firm, which had added to it other names and ratings taken from the books of other agencies, including Bradstreet's and Dun's. (Rec., 809.) Thus, the difference between the red bound book and the black bound book was that the names and ratings from Bradstreet's and Dun's were in the red bound book, but did not appear in the black bound book or printer's copy. (Rec., 808-810, 639.)

The first thing done in making up the new book was to send a revision blank to some one in every town mentioned in the office book or tickler. (Rec., 467), for the purpose of securing information with respect to the names and financial standing of the lumber dealers in those particular towns, and other

information necessary for the book. (Rec., 471.) When these revision sheets were returned they were arranged according to states and towns in alphabetical order, the same as the names would appear in the regular edition. (Rec., 471.) The revisers would then take the black bound book or printer's copy of a particular state and the new revision blanks of the same state and would compare the names on the revision blanks with the names as they appeared in the black bound book, and if any changes were suggested by the revision blank they would make them in the black bound book, and if anything seemed to be lacking, or the information incomplete, they would examine the reports on file in the office or write to the correspondent for additional information. (Rec., 810-811, 695-697, 766, 768.)

Defendants' Exhibit 140 is a copy of the January, 1902, edition of the defendant association's book. (Rec., 847, 856-860, 932.) It was compared with the September, 1901, edition of the Dun book and shows the dissimiliarity between the two books.

The check marks to the left indicate the names claimed by complainants to have a similar rating.

The cross in red ink to the right indicates the names and towns not appearing in the Dun book at all. (Rec., 932.)

The notations in pencil to the right of the names claimed to have a similar rating show how names, ratings and classifications appear in the Dun book. (Rec., 847.)

The following are copies of the first pages of said L. C. A. book, Defendants' Exhibit 140, in Alabama, Colorado, Michigan, New York and Washington.

ALABAMA.

Abbeville, Henry Co—Pop. 889—P. S.
Forrester B A & Bro.....mfrs lum
(See Cowarts.)
Kirkland A A.....planing mill EF 2
Loyd & Woodall Bros.....saw mill F 1
Bank of Abbeville. So. Ex. Bert B. Hays, Atty.

Abbott, Conecuh Co.
—Pop. 165. R. R. Evergreen, L. & N.
Joyner & Co.....saw mill
Littles H K.....mfr s d & b
Mixon A C.....saw mill
Shafner James.....shingle mill
Bank at Evergreen.

Abercrombie, Bibb Co.
R. R. Centreville, M. & O.
Moore & Stewart.....saw mill EF 2
Bank at Blocton.

Abernathy, Cleburne Co.
Pop. 27—R. R. Edwardsville, S, R. Co.
Todd G A.....mfr lumber 1
Wilson & Co.....saw mill
Bank at Tallapoosa, Ga.

Active, Bibb Co—Pop. 22—M. & O.
Gentry B M & Co....saw & plg mill
Holdsombeck J D.....saw mill
Langston R J.....saw mill
Thomas W E.....saw mill
Southern Express to Lawley.

Acttvity, Monroe Co—Pop. 61.
R. R. Beatrice, S. A.
Mason W J.....saw & shg mill F 1
Bank at Brewton.

Adamsville, Jefferson Co.
Pop. 186—K. C. M. & B.
Guthrie J H.....lumber E 1
Bank at Birmingham. Southern Express.

Akron, Hale Co—Pop. 88—A. G. S., S. R. Co.
Schaar Chas H & Co.....saw mill
Bank at Eutaw. Southern Express.

Alabama City Etowah Co—Pop. 2,276.
G. & A. U., L. & N., S. R., A. G. S.
Kyle Lbr Co.....mfrs yel p lum
(See Gadsden.)
Bank at Gadsden. Southern Express.

Alameda, Clarke Co—Pop. 160—S. R. Co.,
Hamilton Lbr Co
mfrs y p & h w lumber C 1
Bank at Thomasville, Southern Express.

Alberton, Coffee Co—Pop. 42.
R. R. Opp, L. & N.
Page Bros.....saw mill & g s D 1
Bank at Elba.

Albertville, Marshall Co.
Pop. 1 500—N. C. & St. L.
Curry W W Jr.....s p m etc E 1
Bk. at Guntersville. So. Ex. E. O. McCord, Atty.

Alexander City, Tallapoosa Co.
Pop. 1,061—C. of G.
Beylen J W.....saw mill H 3½
Mason S C.....saw mill etc F 1
Tallapoosa Oil Co.....mfrs lum etc AA 1
Wilder & Hobbs.....s & shg mill F 1
Alexander City Bank. P. O. Stevens, Atty.
Southern Express.

1 ALA 1

Please report any omission or correction you discover.

COLORADO.

Aguilar, Las Animas Co.
—Pop. 698—C. & S.
Blethen (The) Lum Co...s m & lum
(See Trinidad.)
Blg & Merc Co..... saw mill 100
Cossum & Norman....lumber & g s E 2
Keystone Lbr Mining Real Estate
Wood C S.....lumber & s m D 1
Bank at Trinidad. Fred Rustedt, Atty
W. F. & Co. Express, at Lyon.

Akron, Washington Co.
—Pop. 351—B. & M. R.
Butts L M..... lumber E 1
Gibson H A.....lum & coal E 2
Hennington & Elton. l p m & contrs EF 2
Bank of Akron. Ad. Ex. A. J. Johnson, Atty.

Alamosa, Conejos Co—Pop. 1,141—D.& R.G.
Muller Henry.....lumber & coal D 1
Wallrich Christian.....lumber etc E 1
Bank of Alamosa. Chas. A. Merriman, Atty.
D. & R. G. Express.

Alma, Park Co—Pop. 297—C. & S.
Stanley W P.....s m & lum E 1
Bank of Alma. W. F. & Co. Express.

Antonito, Conejos Co—Pop. 347—D. & R. G.
Carroll W D.....s d b & hdwe D 1
Dalton J H.....saw mill 3
Shupe W P.....mfrs int fin & p m 3
Bank at Alamosa. D.& R.G. Ex. R. K. Brown, Atty.

Arvada, Jefferson Co—Pop. 300—C. & S.
Greene R C.....lum coal & gr F 1
Bank at Denver. R. C. Greene, J. P.
W. F. & Co. Express.

Aspen, Pitkin Co.
—Pop. 3,303—D. & R. G., C. M.
Koch Harry G.....lumber 1
State Bank of Aspen. H. C. Rogers, Atty.
D. & R. G. Express.

Bayfield, La Plata Co.
—Pop. 125—R. R. Ignacio. D. & R. G.
Bartholomew Chas E.....mfr lum 3
Beaver Creek Lumber Co...lumber 1
Graden T C.....s p & shg mill D 1
Hartman A.....mfr shgs 80 3
Bank at Durango. E. G. Bates, J. P.

Bed Rock, Montrose Co.
—Pop. 35—R. R. Placerville. R. G. S.
Barnes & Co.....lumber
(See Durango)
Bank at Montrose.

Bellevue, Larimer Co—Pop. 91—C. & S.
Bellevue Mercantile Co (The)
lumber & g s
Bank at Fort Collins. W.F.& Co. Ex.at Fort Collins.

Berthoud, Larimer Co—Pop. 305—C. & S.
Fairbairn & Parish...lumber & coal D 1
Bank of Berthoud. W. F. & Co. Express.

Boulder, Boulder Co.
—Pop. 6,150—U. P., C. & S., Col. & N. W.
Baldwin L E.....plg mill 2
Harris E L.....lumber
Harris W J.....lumber
McAllister Lumber & Supply Co
saw p m & lum A 1

1 COL 1

Don't fail to copy sheet matter into book; losses are made by not doing so

MICHIGAN.

Abscota, Union City P.O., Calhoun Co.
—Pop. 50—R. R. Union City, M. C.
Smith Wm Jr.....saw mill EF 2
Bank at Union City.

Adalaska, Presque Isle Co.
(See Onaway.)

Adamsville, Fern P. O., Mason Co.
—Pop. 200—M. & O.
Bishop L C.....saw mill & lum E 2
Bank at Cassoplis. American Ex. at Ludington.

Addison, Lenawee Co—Pop. 425—C. N.
Kline & Dean.....lumber & hdwe D 1
Saunders F A Sons.....s p m & h w l EF 3
O. B. Bowen, Bkr. Am. Ex. O. B. Bowen, Atty.

Adrian, Lenawee Co.
—Pop. 9,654—L. S. & M. S., W. Ry., D. & L. N.
Adrian Veneer Package Co
mfrs veneer fin E 1
American Screen Door Co
mfrs screens etc C 1
Babcock S P Son & Co. mfrs agl impl E 1
Baker D M.....lumber & coal AB 1
Clark Chas.....whol lumber 100
Columbia Refrig Co....mfrs refrig C 1
Gilliland Electric Co.....s & p m AB 1
Gilliland (The) Box Co..mfrs boxes 7
Goodsell Mfg Co.....p m s d & b
(Purchasing Dept. Toledo, O.)
Higbee Merritt.....mfr veneers
Kimball Co.....mfrs cigar-boxes E 1
Lesh & Young Co.....mfrs h w lum C 1
Palmer A E Furn Mfg Co
mfrs chairs tables etc BC 2
Stevenson A & Son...lumber & coal AB 1
Treat E B.....s m h w lumber 2
Lenawee Co. Savings Bk. United States Express.
Watts, Smith & Baldwin, Attys.

Akron, Tuscola Co—Pop. 428—S. T. & H.
Cook Bros.....s m h w l F 2
Cook Emery D.....saw mill 1
Davis Bros.....s & shg m 3
Mallory Bros....cheese box factory 1
Truax L C.....mfr lum & cedar 3
Bank of Akron. American Express.

Alamo, Kalamazoo Co—Pop. 150—M. C.
Tallman Aaron.....mfr h w lumber D 1
Bank at Kalamazoo. American Express.

Alanson, Emmet Co—Pop. 208—G. R. & I.
Colby-Hinckley Co.....saw mill
(See Benton Harbor.)
Markham M S.....shg mill
White E R.....lumber hdwe & g s F 2
Bank at Petoskey. Adams Express.

Alaska, Kent Co.
—Pop. 200—R. R. Caledonia, M. C.
Doty Geo N & Son.....saw mill
Elkerton D F.....saw mill & ties E 2
Bank at Grand Rapids. Benj. T. Fulton, J. P.

Alba, Antrim Co—Pop. 450—G. R. & I.
Matthews E & Son....s d b & hdwe F 1
Tindle & Jackson.....saw mill etc
(See Buffalo, N. Y.)
Bank at Mancelona. Ad. Ex. E. E. Mills, J. P.

Albion, Calhoun Co.
—Pop. 4,519—M. C., L. S. & M. S.
Cook Mfg Co...mfrs wind mills etc D 1
Gale Mfg Co....mfrs agl implts AAA 1
Groff & Herrick.....lumber & p m F 2

Please report any omission or correction you discover.

NEW YORK.

Accord, Ulster Co—Pop. 352—E. & K.
Baker John A.....saw mill D 1
Bank at Ellenville.

Acra, Greene Co.—Pop. 91.
R. R. Cairo, C. M. & C.
Crapser Henry C.....saw mill 3½
Bank at Catskill. W. P. Olmsted, J. P.

Adams, Jefferson Co—Pop. 1,292—R.W.& O.
Baker A E.....saw mill EF 2
Pratt W L.....saw p mill & lum C 1
Webster Fred L.....saw mill E 2
Farmers Natl. Bk. Am. Ex. E. S. Hunt, Atty.

Adams Center, Jefferson Co.
—Pop. 699—R. W. & O.
Greene O De Grasse & Son
p m s d b & lumber C 1
Snell W D & M D.....lumber AB 1
American Express. Cooley & Davis, Attys.

Addison, Steuben Co—Pop. 2,080.
E. R. R., B. & S.
Casson Mudair & John C...lumber
(See Presho.)
Cortland Owens.....lumber EF 3
Crane A G & Co.....p m s d & b B 1
Folding Crate & Lbr Co
mfrs potato crates E 1
Harrison J S.....mfr plow handles C 1
Harton Geo H....shg m & box fcty 7
Park, Winton & True(C.P.21)
p m s d b & h w lumber AA 1
Phillips C H.....lumber
Wheaton F H.....saw & plg mill D 1
First National Bank. H. D. Baldwin, Atty.
W. F. & Co. Express.

Afton, Chenango Co—Pop. 722—D. & H.
Barr Bros.....saw mill EF 2
Caswell S Girard...lumber (no yd)
Church Bros.....mfrs lumber D 1
Partridge Howard.....saw mill 2
Peck P R.....saw mill EF 1
Pierce J B.....s d & b E 1
Seeley I W.....saw mill EF 1
Church & Hill. Nat. Ex. Geo. A. Haven, Atty

Akin, Montgomery Co—Pop. 148.
N. Y. C. & H. R.
Slutca Charles.....saw mill
American Express.

Akron, Erie Co—Pop.11,665.
N Y. C. & H. R., W. S.
Belger & Corbett....l & mfrs s d & b E 1
Bower Bros...l coal & mfrs s d & b E 1
Jackson T W.saw plg mill lum etc B 1
Wickware Natl. Bank. Paxon & Paxon, Atty.
American Ex.

Alabama, Genesee Co—Pop. 240—W. S.
Rowley & Eddy.....lumber etc
(See Middleport.)
Bank at Medina. Nat. Ex. M. A. Filkin, J. P.

Albany, Albany Co—Pop. 94,151.
N. Y. C. & H. R., W. S., D. & H., B. & A.
Albany Casket Co ....mfrs caskets E 1
Albany Material & Construction Co
whol & ret bldg supplies lum etc D 1
Arnold & Co.....lumber AAAA 1
Atlantic Coast Lbr Co.....lumber
(See Georgetown, S. C.

Don't fail to copy sheet matter into book; losses are made by not doing so

WASHINGTON.

Aberdeen, Chehalis Co - Pop. 3,747—N. P

Aberdeen Lbr & Shg Co..s & shg m C 1
Aberdeen Mfg Co
saw plg mill & box factory
American Mill Co.....saw mill D 1
Anderson Middleton Lbr Co
saw mill A 1
Bryden & Leitch Lbr Co..saw mill C 1
Clark A L.....saw mill 100
Farnam A H & Co.....saw mill 1
Lewis C L.....shg mill E 1
Union Shingle Co....mfrs r e shgs D 1
West & Slade Mill Co.....saw mill AA 1
Western Cooperage Assn
shg mill & stave fcty B 1
Wilson Bros & Co.....saw mill AB 1
Hayes & Hayes, Bkrs. J. B. Bridges, Atty.
Northern Pacific Express.

Acme, Whatcom Co—Pop. 80—S. & I.

Canedy E N.....shg mill E 2
Bank at Sedro-Woolley. West. Ex. at Wickersham.

Addy, Stevens Co.—Pop. 93—S. P. & N.

Dearinger & Dearinger...s p m & l
Humphrey E A.....s p m & l F 1
Naff J F.....saw mill G 2
Bank at Colville. Northern Pacific Express.

Almira, Lincoln Co—198 N. P.

Rolf Bros.....lumber E 1
Northern Pacific Express.

Amboy, Clarke Co.—Pop. 112
R. R. Vancouver. P. & V.

Hooper Johnson.....saw mill
Martin & Martin..s m cross ties etc EF 2
Bank at Vancouver.

Anacortes, Skagit Co—Pop. 1476—S. & N.

Fidalgo Mill Co
saw plg shg mill & box fcty BC 1
Novelty Works.....p m & box fcty G 3
Rodgers W M.....l p m & box fcty
Skagit Mfg Co.....mfrs shgs E 1
Storme & Ronneberger
mfrs red cedar shgs D 1
Citizens Bank. Northern Pacific Express.

Anatone, Asotin Co.
Pop. 109—R. R. Lewiston, Idaho. N. P.

Farrish Wm.....s p shg m & l C 1
Bank at Asotin.

Arlington, Snohomish Co—Pop. 852—S. & I.

Bryant Shingle Mill Co...mfrs shgs D 1
Cross & Larson.....shg mill 100
Dorgan M J.....saw mill EF 1
Eckles C.....mfrs shingles EF 1
Hudson C A.....lumber B 1
Lincoln Shg Co.....shg mill E 1
Moran Thomas.....s d b & hdwe C 1
Morgan W J....mfr red cedar shgs
Stewart & Emerson.....lum & g s E 1
Arlington State Bank. L. N. Jones, Atty.
Western Express.

Ashford, Pierce Co—Pop. 24
R. R. Lake View. N. P.

Mesler A Alex.....saw plg mill etc
Bank at Tacoma.

Asotin, Asotin Co.
Pop. 470—R. R. Lewiston, Idaho. N. P.

Farrish Wm....saw p shg m & lum
(See Anatone.)
First Bank of Asotin. Geo. W. Bailey, Atty.

1 WASH 1

If you don't find name in book or supplement make inquiry for report.

The complainants subpoenaed the defendants to produce information in regard to seventy-three names selected by them from the defendant association's book. The defendants produced over three hundred reports and other documents containing original information as to these seventy-three names. (Rec., 343-382.) This information consisted of reports from correspondents, financial statements from the persons themselves, financial reports from agents and mercantile associations and lawyers located in the towns where the persons or firms were, and reports from subscribers and members of the association.

Out of 60,000 names in the defendant association's book there are **16,089** names not contained in the Dun book at all. (Rec., 930.)

As to the seventy-three names heretofore mentioned, in regard to which the complainants called upon defendants to produce original information, the following is a copy of the towns, names, classifications and ratings as they appear in the Dun book and as they appear in the defendant association's book. This shows the wide difference in the information given in the two books, even as to these names. *The italicized words and phrases indicate the differences in the two books:*

TABLE SHOWING

Differences in Dun and L. C. A. Book as to 73 Names, and also Names in Reference to which Depositions were Taken.

TOWNS, NAMES AND GENERAL INFORMATION AS PRINTED IN LUMBERMEN'S CREDIT ASSOCIATION BOOK, JANUARY, 1902.

ALEXANDER CITY, TALAPOOSA CO., Pop. 1,061. C. of G.
Tallapoosa Oil Co. — *Mnfrs. lum., etc.* — AA 1

CREOLA, MOBILE CO., Pop. 50. S. R. Co.
Creola, Lumber Co., — *Mnfrs. lumber* — AB 1

MOBILE, MOBILE CO., Pop. 38,469. S R. CO., L. & N., M. & O., M. J. & K. C., and M. B. & S
Blacksher Co., — *Mnfrs. & exptrs y p lum* — AAA 1
Yellow Pine Lumber Co. — *Mnfrs. y p lum* — AAA 1

SAFFORD, GRAHAM CO., Pop. 950. G. V. G. & N.
Safford Lumber Co., — *lumber (see Globe Lumber Co.)* — .....

ST. JOHNS, APACHE CO., Pop. 1,100. R. R. Holbrook, S. Fe P.
St. Johns *C. M. & M. I.* — *s d b etc.* — D 1

MONTICELLO, DREW CO., Pop. 1,679. St. L. I. M. & S.
McCoy & Trotter, — *s d b & g s* — AA !

TEXARHANA, MILLER CO., Pop. 4,914. St. L. I. M. & S., St. L. S. W., T. & P., K. C. P. & G,
Standard Novelty Works, — *pm etc.* — C I T. S. & N.

SAN BERNARDINO, SANBERNARDINO CO., Pop. 6,150. S. C., S. P.
J. B. Gill Lumber Co., — *(J. B. Gill, Propr.) lumber* — D 1

SAN FRANCISCO, SAN FRANCISCO CO., Pop. 342,782. S. P.
Bennett & Schutte, — Mnfrs Wood Mantels, etc. — E 1
Bush & Mallett Co., — *mnfrs wood mantels, & int. fin.* — E 1
Crocker, Wm. — *planing mill* — C 1
Hanify, J. R. & Co., — *lumber, etc.* — E 1
MacDonald Lumber Co., — *lumber* — F 1
Swain-Hadwen Mfg. Co., — *mnfrs refrigerators* — F 1

SAN JOSE, SANTA CLARA CO., Pop. 21,500. S. P.
Cottoneva Lumber Co., — *lumber* — D 3
Greeninger, A., & Son, — *mnfrs wagons agl implts, etc.* — D 1
(Or Globe Carriage Works.)

CRIPPLE CREEK, TELLER CO., Pop. 10,147, F. & C. C., M. T.
Maroney, Larry — *s p m & lum.* — C 2

DENVER, ARAPAHOE CO., Pop. 133,895. B. & M. R., D. & R. G., A. T. & S. Fe, U. P., D. L.
Leopold, Henry — *lumber* — F 2 — & G., (D), C. E., C. & S.

MANZANOLA, OTERO CO., Pop. 250. A. T. & S. Fe.
Beaty J. N. & Co. — *lum, etc.* — B 1

HARTFORD, HARTFORD CO., Pop. 79,850. N. Y. N. H. & H., C. N. E., H. S. (Elec.) H. M. &
Hartford Box Co. — *mnfrs boxes* — F 2

MILFORD, NEW HAVEN CO., *Pop. 3,775.* N. Y. N. H. & H.
Smith, *D. E. & Co.* — *h w lum & p m* — E 2

HAWLEYVILLE, FAIRFIELD CO., *Pop. 300.* N. Y. N. H. & H.
Hawley, Amos L. — *s m h w l* — H 2

MYSTIC, NEW LONDON CO., Pop. 3,000. N. Y. N. H. & H.
Mystic Lumber Co., — *l p m s d & b* — E 2

NEW HAVEN, NEW HAVEN CO., Pop. 108,027. N. Y. N. H. & H.
Robinson, W. S. & Co. — *mnfrs tubs, etc.* — B 1

WATERBURY, NEW HAVEN CO., Pop. 45,859. N. Y. N. H. & H.
Waterbury Lbr. & Coal Co — *lumber & Mfrs* — . . .

TOWNS, NAMES AND GENERAL INFORMATION AS PRINTED IN R. G. DUN & CO., BOOK, SEPTEMBER, 1901.

ALEXANDER CITY, TALLAPOOSA CO.—5 G. Population 1,061. A Banking Town.
Tallapoosa Oil Co. (*not inc.*) D + 1½

CREOLA, MOBILE CO.—10 B. Population 75. Banking Town Mobile.
Creola Lumber Co. D 2

MOBILE, MOBILE CO. Population 38,469. Location on Map 10 B.
Blacksher Co. *Saw mill, etc.* (*Also Mount Pleasant.*) AA 1
Yellow Pine Lumber Co. *Saw mill.* (*Also Yellow Pine.*) C + 1

SAFFORD, GRAHAM CO.—6F. Population 1,000. A Banking Town.
Safford Lumber Co. (*not inc.*) 3

ST. JOHNS, APACHE CO.—4 F. Bkg. T. Albuquerque, N. Mex. Population 1,200.
St. Johns *Co-operative Merc. & Mfg. Institution,*
G. S. & Mnfg. Flour, etc. (*Also Springerville.*) D 2

MONTICELLO, DREW CO.—7 h. Population, 1,579. A Banking Town.
McCoy & Trotter. *G. S., wagons, etc.* C 1½

TEXARKANA, MILLER CO.—8 C. Population 4,914.
Standard Novelty Works. (*not inc.*) C 1½

SAN BERNARDINO, SAN BERNARDINO CO.—8G. Population 6,150. A Banking Town.
Gill, J. B. Lumber Co. (*not inc.*) D 2

SAN FRANCISCO, SAN FRANCISCO CO.—Population 342,782. Location on Map 5 B.
Bennett & Schutte. Mnfrs. Wood Mantels, etc. E 2½
Bush & Mallett Co. *Mantels, Grates & Parquet Flooring.* E 3
Crocker, Wm. *San Francisco Planing Mills.* C 1½
Hanify, J. R. & Co. *Lbr. & Ship'g.* E 2½
MacDonald Lumber Co. (*not inc.*) F 3
Swain-Hadwen Manufacturing Co. (*not inc.*), *Printing Presses,*
Gas Engines, &c. F 3

SAN JOSE, SANTA CLARA CO. Population 21,500. Location on Map 5 C.
Cottoneva Lumber Co. (*Also Rockport.*) D + 2½
Greeninger, A. & Son. *Globe Carriage Works.* D + 2

CRIPPLE CREEK, TELLER CO.—5 J. Population 10,147. A Banking Town.
Maroney, Larry *Lumber & Builders' Materials.* C + 1

DENVER, ARAPAHOE CO. Population 133,859. Location on Map 3 K.
Leopold, H. *Lumber & Paints.* F + 3

MANZANOLA, OTERO CO.—6 M. Population 250. A Banking Town.
Beatty, J. N. & Co. *G. S. & Bank.* B 1

HARTFORD, HARTFORD CO. Population 79,850. Location on Map 2 E.
Hartford Box Co., The, *manfrs. paper boxes.* F 3

MILFORD, NEW HAVEN CO.—5 C. Population 3,783. Banking Town New Haven.
Smith, *David E. & Co* *Builders.* E 2

HAWLEYVILLE, FAIRFIELD CO.—4 B. Population 509. Banking Town Danbury.
Hawley, Amos. L. *Saw & Grist Mills.* H 3½

MYSTIC, NEW LONDON CO.—4 H. (*Old Mystic P. O.*) Population 3,000. A Banking Town.
Mystic Lumber Co. (*not inc.*) E 2½

NEW HAVEN, NEW HAVEN CO. Population 108,027. Location on Map 4 D.
Robinson, W. S. Co. (*not inc.*) *Mnfrs. Kegs, Tubs, &c.* B + 1

WATERBURY, NEW HAVEN CO.—3 C. Population 45,859. A Banking Town.
[illegible] C 11

TOWNS, NAMES AND GENERAL INFORMATION AS PRINTED IN LUMBERMEN'S CREDIT ASSOCIATION, JANUARY, 1902, BOOK.

ATLANTA, FULTON CO., Pop. 89,872. C. of G., A. & W. P., A. K. & N., G. R. R., S. R. Co. N. C. & St. L., S. A. L.
Atlanta Basket & *Veneer* Co., *mnfrs. boxes, etc.* C I
Willingham, E. G. & Co. plg. mill. D I

LONG POND, MONTGOMERY CO., Pop. 229. R. R. Ailey, S. A. L.
McArthur, J. H. *saw mills, etc.* D I

MORELAND, COWETA CO., Pop. 229. A. & W. F.
Brannon, W. A. *plg. mill, lum. & g s.* F I

BOISE, ADA CO., Pop. 5,957. O. S. L.
Not in January, 1902, book.
Shaw Lumber Co. *lumber* C I

CARTHAGE, HANCOCK CO., Pop. 2,104. C. B. & Q., W. R'y.
Lyon, W. E. & Co. *lumber* D I

MOLINE, ROCK ISLAND CO., Pop. 17,248. C. R. I. & P., C. M. & St. P., C. B. & Q., D. R. I. & N. W.
Moline Scale Co. *mfrs. scales.* C I

TREMONT, TAZEWELL CO., Pop. 768. C. C. C. & St. L.
Mackemer & Carlin. *lumber.* E I

ANDERSON, MADISON CO., Pop. 20,178. P. C. C. & St. L., C. C. C. & St. L., C. & S. E.
Wilke Mfg. Co. *mnfrs. refrgtrs., etc.* C I

BEDFORD, LAWRENCE CO., Pop. 6,115. C. I. & L., B. & O. S. W., B. B., S. I.
Gillette, W. H. *mnfr. wagon stock.* F I

SHOALS, MARTIN CO., Pop. 683. B. & O. S. W.
Johnson & Chenoweth, *s d b & g s* D I
(*Benj. C. Johnson, Propr*)

SOUTH BEND, ST. JOSEPH CO., Pop. 35,999. G. T., T. H. & I., L. S. & M. S., M. C., I. I. & I., St. S. B. & I.
South Bend Wagon Co. *mnfr. wgns.* B I

VINCENNES, KNOX CO., Pop. 10,249. E. & T. H., C. C. C. & St. L., I. & V., B. & O. S. W.
James, E. & R. O. *saw mill.* F 2

DAVENPORT, SCOTT CO., Pop. 35,254. C. M. & St. P., C. R. I. & P., B. C. R. & N., D. R. I. & N. W.
Stelling, P. J. & Co. *mnfrs. s d b, etc.* C I

CENTERVILLE, ST. MARY PAR., Pop. 414. R. R. Foster, S. P.
Wilkes, A. R. N. *lum. & g s.* G 2

PORTLAND, CUMBERLAND CO., Pop. 50,145. B. & M., Me. C., G. T.
Mason, *Leslie L.* comn. lumber. F 2

CORDOVA, TALBOT CO., Pop. 112. P. W. & B.
Morris & Lowe saw mill. F I

BOSTON, SUFFOLK CO., Pop. 560,892. B. R. B. & L., B. & A., B. & M., N. Y. H. & H.
D'Arcy, *M. F. & Co.* *s d & b.* 2

DARTMOUTH, BRISTOL CO., Pop. 3,669. R. R. New Bedford, N. Y. N. H. & H.
Allen, *James.* *saw mill.* F I

FLORENCE, HAMPSHIRE CO., *Pop. 3,000.* N. Y. N. H. & H.
Florence Wfg. Co. *mnfrs. brushes, etc.* C I

LEOMINSTER, WORCESTER CO., *Pop. 12,392.* N. Y. N. H. & H.
Whitney, F. A. Carriage Co. *mnfrs. baby crgs.* AAA I

MIDDLEBORO, PLYMOUTH CO., *Pop. 6,885.* N. Y. N. H. & H.
Clarke & Cole mnfrs. lum. & boxes. D 3

COPY BOUND CL

TOWNS, NAMES AND GENERAL INFORMATION PRINTED IN R. G. DUN & CO., SEPT., 1901, BOOK.

ATLANTA, FULTON CO. Population 89,872. Location on Map 3 B.
Atlanta Basket & *Veneering* Manufacturing Co. C 2
Willingham, E. G. & Co. *Plg. Mill.* D 2

LONG POND, MONTGOMERY CO.—6 G. Population 229. Banking Town in Mt. Vernon.
McArthur, J. H. *Turpentine, G. S. & Saw Mill.* G 3

MORELAND, COWETA CO.—4 B. Population 229. Banking Town Newnan.
Brannon, W. A. *G. S. & Jewelry.* F 4

BOISE, ADA CO.—11 B. Population 5,957. A Banking Town.
Ruby Creek Lumber Co. (*not inc.*) *E* 3
Shaw Lumber Co. (*not inc.*) C + 1½

CARTHAGE, HANCOCK CO.—5 A. Population 2,104. A Banking Town.
Lyon, Wm. E. & Co. Lumber. D 2

MOLINE, ROCK ISLAND CO.—3 B. Population 17,248. A Banking Town.
Moline Scale Co. (*not inc.*) *Mnfrs.* C 1½

TREMONT, TAZEWELL CO.—4 D. Population 768. A Banking Town.
Mackerner & Carlin. Lumber. E 2

ANDERSON, MADISON CO.—4 E. Population 20,178. A Banking Town.
Wilke Manufacturing Co., *The.* *Mnfrs. Refrigerators.* C 1½

BEDFORD, LAWRENCE CO.—7 D. Population 6,115. A Banking Town.
Gillette, W. H. *Mnfrs. Carriage Mat'ls.* F 3½

SHOALS, MARTIN CO.—7 C. Population 683. A Banking Town.
Johnson & Chenoweth, *Whol. Gro.* D 2½

SOUTH BEND, ST. JOSEPH CO. Population 35,999. Location on Map 1 D.
South Bend Wagon Co. *Mnfrs.* (*Also Mishawaka.*) D 1½

VINCENNES, KNOX CO.—7 A. Population 10,249. A Banking Town.
James, E. & R. O. Saw Mill. F 3

DAVENPORT, SCOTT CO. Population 35,254. Location on Map 4 M.
Stelling, P. J. & Co. *Inside Finish & Mfrs. Sashes & Doors.* C 1½

CENTERVILLE, ST. MARY PAR.—7 G. Population 414. Banking Town Franklin.
Wilkes, A. R. N. *G. S. & Cooperage.* G 3½

PORTLAND, CUMBERLAND CO. Pop. 50,145. Location on Map 8 C.
Mason, *L. L.* Com'n Lumber. F 3

CORDOVA, TALBOT CO.—5 P. Population 150. Banking Town Easton.
Morris & Lowe, Saw Mill. (*Also Delmar, Del.*) F 3

BOSTON, SUFFOLK CO. Population 560,892.
D'Arcy, *Michael F. & Co.* *Doors, &c.* C 2

DARTMOUTH, BRISTOL CO.—6 K. Population 3,669. Banking Town New Bedford.
Allen, *James 2.* *Saw & Grist Mills.* F 3

FLORENCE, HAMPSHIRE CO.—3 D. (*See also Northampton*) Banking Town Northampton.
Florence Manufacturing Co. *Mnfrs. Toilet Sets, Hair Brushes, &c.* (*And Branches.*) C 1½

LEOMINSTER, WORCESTER CO.—2 G. Population 10,592. A Banking Town.
Whitney F. A. Carriage Co. *Children's Carriages.* C 1½

MIDDLEBORO, PLYMOUTH CO.—5 K. *Population 4,495.* A Banking Town.
Clarke & Cole. *Mnfrs. Cases.* D 2

LOSE IN CENTER

TOWNS, NAMES AND GENERAL INFORMATION AS PRINTED IN LUMBERMEN'S CREDIT ASSOCIATION, JANUARY, 1902, BOOK.

FRAMINGHAM, MIDDLESEX CO., Pop. *11,302* N. Y. N. H. & H.
Ordway, A. H. & Co. *mnfrs. chairs.* C I

SOUTH HADLEY FALLS, HAMPSHIRE CO., *Pop.* 3,000. R. R. Holyoke, B.& M.,N.Y.N.H&H.
Howard, Gaylord & Co. mfrs. s d & b. C I

TAUTON, BRISTOL CO., Pop. 31,036. N. Y. N. H. & H.
Booth & Luther, *p m s d & b* F I

WORCESTER, WORCESTER CO., Pop. 118,421. B. & A., B. & M., N. Y. N. H. & H.
Hatch & Barnes, *p m int fin* B 2

MANISTEE, MANISTEE CO., Pop. 14,260. P. M., M. & N. E., M. & G. R.
Rosenfield, Otto, *s d b & hdwe* G 2

CONCORD, MERRIMACK CO., Pop. 19,632. B. & M.
Stevens, C. H. & Co., *lumber & Coal* F 2

NASHUA, HILLSBORO CO., Pop. 23,898. B. & M.
Proctor Bros. & Co. *box factory, etc.* AB 2

HAMBURG, SUSSEX CO., *Pop. 589.* N. Y. S. & W., L. & H. R.
Ingersoll, W. H., *lumber, coal, etc.* E I

MOUNT HOLLY, BURLINGTON CO., *Pop. 4,500.* Pa. R. R.
Bullock, Wm. L., *s p m mfr s d & b* EF I

NEWTON, SUSSEX CO., Pop. 4,376. D. L. & W.
Hopkins & *William* Co., *lum & mfrs s d & b* C I

ESPANOLA, SANTE FE CO., *Pop. 172.* D. & R. G., R. G. & S. Fe.
Biggs, Pollard & Grives, *s d b hdwe & g s* C I

PORT JERVIS, ORANGE CO., Pop. 9,385. P. J. M. & N. Y., E. R. R.
Cogo, J. M. & Co., *p m s d & b* F 2

WILMINGTON, NEW HANOVER CO., Pop. 20,976. A. C. L., W. S. C. S. A. L.
Fore & Foster, *P. M. S. & B. Mfg. Co.* (Ltd.) *s p shg mill mfrs s d b, etc* D I

BRADFORD, McKEAN CO., Pop. 15,029. B. B. & K., W. N. Y. & P., A. & K., B. R. & P.
Stout & Holden, *saw mill & lum* D I

LANCASTER, LANCASTER CO., Pop. 41,459. Pa. R. R., P. & R., L. & R. C. R'y.
Lancaster Planing Mill Co., *plg m* C 2

LITTLESTOWN, ADAMS CO., Pop. 1,118. Pa. R. R.
Crouse, Charles, *lumber* F 2

MARTINSBURG, BLAIR CO., Pop. 590. Pa. R. R.
Skyles, Miller & Co., *lumber & coal* C I

PORTLAND, NORTHAMPTON CO., Pop. 490. B. & P., L. & N. E., D. L. & W.
Portland Lumber Co., *lumber* B 1

WARREN, WARREN CO., Pop. 8,043. P. & E., D. A. V. & P., W. N. Y. & P.
Clough, L. S., *s m & lumber* A I

PROVIDENCE, PROVIDENCE CO., Pop. 175,597. N. Y. N. H. & H.
Gilbane, Wm. & *Bros.*, *saw plg mill mfrs s d & b* C 2

MEMPHIS, SHELBY CO., Pop. 102,320. I. C., K. C. Ft. S. & M., K. C. M. & B., Y. & M. V. M. & C.,
Blanton Stave & Lumber Co., L. R. & M., N. C. & St. L., L. & N.
(Not in January, 1902, Book.)

BURLINGTON, CHITTENDEN CO., Pop. 18,640. Cen. Vt., R. RY.
Champlain Mfg. Co., *p m int finish* D I

HUNDRED, WETZEL CO., Pop. 261. B. & O.
Ashcraft, J. P.,
(Not in January, 1902, book.)

TOWNS, NAMES AND GENERAL INFORMATION PRINTED IN R. G. DUN & CO., SEPT., 1901, BOOK.

SO. *FRAMINGHAM*, MIDDLESEX CO.—3 I. A Banking Town.
Ordway, A. H. & Co., *Mnfrs. Rattan Chairs.* C 1½
(Also Chicago, Ill.)

SOUTH HADLEY, HAMPSHIRE CO.—4 D. *Population 4,256* (Inc.S.Hadley Falls). A Banking Town
Howard, Gaylord & Co., Sashes and Blinds. C + 1

TAUTON, BRISTOL CO., Population 31,036. Location on Map 5 J.
Booth & Luther, *Plg. Mill & H'ware* F 3½

WORCESTER, WORCESTER CO. Population 118,421. Location on Map 3 G.
Hatch & Barnes, *Builders' finish* E 2½

MANISTEE, MANISTEE CO.—10 J. Population 14,260. A Banking Town.
Rosenfield, Otto, *Plumber & h'ware* G 3½

CONCORD, MERRIMACK CO.—5 D. Population 19,632. A Banking Town.
Stevens, C. H. & Co., *Lbr., Bark, &c.* F 3

NASHUA, HILLSBORO CO.—6 E. Population 23,898. A Banking Town.
Proctor Bros. & Co. *Lumber & Mnfrs. Casks* C + 1½
(Also Jersey City, N. J.)

HAMBURG, SUSSEX CO.—2 g. Population 700. Banking town Newton or Deckertown.
Ingersoll, W. H., *Miller, Coal & Lumber* E 2

MOUNT HOLLY, BURLINGTON CO.—7 F. *Population 6,000.* A Banking Town.
Bullock, Wm. L., *Carpenter & Sash Factory* G 3

NEWTON, SUSSEX CO.—2 G. Population 4,376. A Banking Town.
Hopkins, & *Williams* Co., *Coal & Feed* D 2

ESPANOLA, SANTE FE CO.—3 I. *Population 200.* Banking Town Sante Fe.
Biggs & Pollard, *G. S.* C 1½

PORT JERVIS, ORANGE CO.—8 K. Population 9,385. A Banking Town.
Cogo, J. M. & Co., *Sashes, Blinds & Lumber* F 3

WILMINGTON, NEW HANOVER CO. Population 20,976. Location on Map 5 N.
Fore & Foster, *Planing Mill & Sash & Blind Mnfg. Co.* (Ltd.) D 2
(Also Castle)

BRADFORD, McKEAN CO.—2 E. Population 15,029. A Banking Town
Stout & Holden. *Saw Mill & Whol. Lumber (Also Gifford)* D + 1½

LANCASTER, LANCASTER CO. Population 41,459. Location on Map 5 J.
Lancaster Planing Mill Co., *(not inc.)* D + 2

LITTLETOWN, ADAMS CO.—6 H. Population 1,118. A Banking Town.
Crouse, Charles, *Lumber & Confec.* F 3

MARTINSBURG, BLAIR CO.—5 F. Population 590. A Banking Town.
Sykes, Miller & Co., *Grain, &c.* D 1½

PORTLAND, NORTHAMPTON CO.—4 L. Population 490. Banking Town, Stroudsburg, Easton or Belvidere, N. J.
Portland Lumber Co., *(not inc.)* F 2½

WARREN, WARREN CO.—2 D. Population 8,043. A Banking Town.
Clough, L. S., *(of L. S. Clough & Co.) McCrays* C 1½

PROVIDENCE, PROVIDENCE CO.—Population 175,597. Location on Map 2 C.
Gilbane, Wm. & *Bro.*, *Contractors.* C 1½

MEMPHIS, SHELBY CO. Population 102,320. Location on Map 4 A.
Blanton Stave & Lumber Co. F 3
(Also Blanton & Parkin, Ark.)

BURLINGTON, CHITTENDEN CO.—3 A. Population 18,640. A Banking Town.
Champlain, Manufacturing Co., *Mnfrs. Chairs, Doors, &c.* D + 1½

HUNDRED, WETZEL CO.—3 G. Population 261. Banking Town Mannington.
Ashcraft, J. P.

(Not in September, 1901, book.)

TOWNS, NAMES AND GENERAL INFORMATION AS PRINTED IN *LUMBERMEN'S CREDIT ASSOCIATION BOOK, JANUARY, 1902.*

FAIRMONT, GRANT CO. (Ind.) *Pop. 3,205.* C. C. C. & St. L., C. I. & E.
Swaim, J. L. & Co., lumber, etc. D 1

WAVERLY, PIKE CO. (Ohio), Pop. 1,854. O. S., N. & W.
Waverly Bending Co. *mfrs. handles* .....
(See Huffman & Breece.)

TALLAPOOSA, HARALSON CO. (Ga.), Pop. 2,128. S. R. Co.
Loworn Bros. saw mill 2

SELMA, DALLAS CO. (Ala.), Pop. 8,713. W. R. of A., B. S. & N. O., So. A., S. R. Co.
Park & Stevens *mfrs. s d & b* C 1

CLEVELAND, CUYAHOGA CO. (Ohio), Pop. 381,768. C. & P., C. C. C. & St. L., L. S. & M. S. N. Y. C. & St. L., C. C. & S., C. L. & W., C. T. & V., E. R'y.
Marquardt Sash & Door Mfg. Co., *mfrs. sd & b* F 2

SPIGNERS STATION, *ELMROE CO.* (Ala.), *Pop. 65.* L. & N.
Goree, L. F., *saw mill* BC 2

GOULD CITY, MACKINAC CO. (Mich.), *Pop. 200.* R. R. Bovee, M. St. P. & S. S. M.
Browley, J. A. E 1

HUNTSVILLE, MADISON CO. (Ala.), Pop. 8,068. S. R. Co., N. C. & St. L.
Crawford, Theo. C., s d & b A 1

KOEPENICK, LANGLADE CO. (Wis.), *Pop. 24.* C. & N. W.
Ratthle, Frank & Co., *mfrs lum* BC 1

PITTSBURG, ALLEGHENY CO. (Pa.), Pop. 321,616. A. V., B. & O., P. Ft. W. & C., P. C. C., & S. L., Pa. R. R., P. & L. E., P. & W., P. & C. S.
Brown, W. E. lumber .....
Phillips & Mittenzwey Saw Mill & Lumber Co.
saw mill & lumber D 1

LAKE, STARK CO. (Ohio), Pop. 553. D. & L. N.
Heinbaugh & Shriner, *mfrs. boxes* EF 2

OWNS, NAMES AND GENERAL INFORMATION AS PRINTED IN *R. G. DUN & CO. BOOR SEPTEMBER, 1901.*

AIRMOUNT, GRANT CO.—*4 E. Population 3,450.* A Banking Town.
Lindsey & Swaim, Lumber F 3

AVERLY, PIKE CO.—6 G. Population 1,854. A Banking Town.
Waverly Bentwood Co., (*not inc.*) E 2½

ALLAPOOSA, HARALSON CO.—3 A. Population 2,128. A Banking Town.
Loworn Bros. Saw Mill .....

ELMA, DALLAS CO.—7 D. Population 8,713. A Banking Town.
Park & Stevens, *Mfrs. Sashes & Blinds,* E 2

EVELAND, CUYAHOGA CO. Population 381,768. Location on Map 1 I.
Marquardt Sash & Door Mnfg Co. (*not inc.*) H 3½

INGERS STATION, *ELMORE CO.*—6 F. *Population 125.* Banking Town Wetumpka or
Goree, L. F., *saw mill, &c.* F 2½ Montgomery

OULD CITY, MACKINAC CO.—6 K. *Pop. 100.* Banking Town Manistique.
Browley, J. A., Cedar G 3

UNTSVILLE, MADISON CO.—2 E. Population 8,068. A Banking Town.
Crawford, Theo. C., Sashes, Doors & Blinds. D + 1½

OEPENICK, LANGLADE CO.—7 H. *Pop. 46.* Banking Town Antigo.
Ratthle, Frank & Co. *saw mill* E 2½

ITTSBURG, ALLEGHENY CO. Population 321,616. Location on Map 5 B.
Brown, W. E., Lumber .....
Phillips & Mittenzwey Saw Mill & Lumber Co. G 3½

AKE, STARK CO.—3 J. *Population 300.* Banking Town Akron.
Heinbaugh & Schriener, *Saw & Planing Mill* L 3½

The reference book of the defendant association differs very materially from the Dun book, and answers an entirely different purpose in the lumber and kindred trades. The defendant association's book is devoted to one line of trade, while the complainants' book covers all lines. (Rec., 865, 873, 880, 885, 893, 903.) The defendant association's book has a railroad guide, an express guide, a bank directory and an attorney's list. (Rec., 758.) Defendant association's book has a marginal space and ruled lines for the use of subscribers in compiling freight rates. It also has a blank margin on the right hand side of the name for any additional data which subscribers may desire to place against the name for information in the shape of changes of firms or any data of the change of financial standing of firms and all information in the way of delinquent matters pertaining to the credit of parties whose names appeared in the book. (Rec., 758.) For the sake of convenience and quick finding of a state, defendants' book has a marginal index. (Rec., 758.) It also has a list of justices of the peace in the towns where there are no attorneys. Complainants' book does not give any of this information. This information is all compiled under the heading of the town and county and of the railroads and population which appear above the names. All the information pertaining to the town is included under the town. Business classification in defendants' book is fully defined, especially as to the character of business, whether or not they are manufacturers, or wholesale dealers, whether they are country yard dealers, those who are wholesalers and do not carry a stock of lumber. (Rec., 758.) In the country yards the defendants indicate where the purchasing depart-

ment is located, while the Dun book simply refers to headquarters. In defendants' book all retail dealers are indicated by the word "lumber." Sawmills are indicated by the letters "S. M." Manufacturers are indicated by "Mnfrs.," showing the kind of lumber manufactured, whether they are hardwood manufacturers or yellow pine. (Rec., 760.)

The Dun book has a credit rating which is general. The defendant association's book has what is called a *pay* rating—"prompt pay," "medium pay," "slow pay," and "very slow pay"—indicating the *manner* in which a man meets his maturing obligations, regardless of his financial standing or assets. (Rec., 761.) Defendants' key has 113 different characters, all indicating different delinquencies, incumbrances and conditions affecting the credit or financial standing of the party (Rec., 761), while the Dun key has but 19 characters. There is no testimony controverting these facts.

THE CONTROVERTED FACTS ARE AS FOLLOWS:

It is contended by the complainants that the defendant association copied names and ratings of Dun & Co., from the red bound book, into its printer's copy without any original investigation, while on behalf of the defendants it is claimed that the only use made of the red bound book was, (1) As a means of directing the defendant to the original sources of information, and (2) In about one per cent. of the names for the purpose of comparing the results reached by defendant, by independent efforts, with the names and ratings in the red bound book; that in the case of all such names, independent investigation was made at orignal sources, and

that the information thus obtained always formed the basis for the name, rating and information given in defendant's reference book, and that names or ratings in the red bound book were not copied into defendant's book.

The complainant contends there are in the September, 1901, book of complainants, and the January, 1902, book of defendants 14,205 like capital ratings, while defendants claim there are only 6,388 like capital ratings in the two books. Defendants contend that of these names and ratings which are claimed by complainants to be alike, there are 950 names in which there are marked differences in the spelling and business classification, so that the total of like names, classifications and ratings in the two books is reduced to only 5,438. The complainants claim there are only 147 towns appearing in the defendant's January, 1902, book, which are not in Dun's September, 1901, book, while defendants claim there are 488 such towns.

ERRONEOUS AND MISLEADING STATEMENTS IN BRIEF OF APPELLANTS.

First. It is charged by appellants, in their bill of complaint (page 3 of appellants' brief) that prior to 1893, when the Lumbermen's Credit Association was incorporated, Mr. William Clancy, its predecessor, made up reference books, published semi-annually, in January and July, wholly or in great part from information contained in the reference book of complainants' predecessors, and without making any original investigations or inquiries for the information, etc. There is not a particle of evidence in the record, whatever, that even tends to prove this charge.

Second. It is charged by counsel in various parts of their brief, that the Dun & Co. book was obtained by the defendants surreptitiously. The evidence, on the contrary, is that it was obtained from a regular subscriber to the Dun book, who was conducting a circularizing agency and who worked for Dun & Co. (Rec., 435-440.) There is no testimony that shows secrecy or concealment.

Third. Appellants, on page 16 of their brief, state that "defendants insist that the red bound book was used for the purpose of comparison only." Counsel has overlooked the statement contained in the affidavit of Burton W. Stadden, which was filed January 25, 1902, eight days after the filing of the bill. Mr. Stadden says (Rec., p. 91):

> "Affiant says further that said red bound books were used as a guide in sending out inquiries for information and for comparison, etc."

Fourth. Counsel, on pp. 55-57 of their brief, endeavor to create the impression that in the lower court they were limited in their investigation to seventy-five names. This is not a fact. They were limited as to one hundred and one names, first as to seventy-three, and later as to twenty-eight names; but this limitation was merely on the hearing before the master on the motion for a PRELIMINARY INJUNCTION. (Rec., p. 45-6; also Rec., p. 64.) There was no limitation whatever on the regular hearing as to the number of names in reference to which complainants might examine. (Rec., 69.) Complainants had the privilege of examining as to the entire 60,000 names in the defendant's book on the regular hearing. The printed record of 1,067 pages and the 619 exhibits in the case indicate the wide scope of the examination.

Fifth. Counsel for appellants have endeavored to create the impression that the revision sheets sent out by appellees contained the names and ratings of Dun & Co. They contend that ratings, corresponding with Dun & Co.'s ratings were placed on the revision blanks before they were sent to the correspondent, and were then returned by the correspondent, with the information which came originally from Dun & Co.'s book.

This is a mere claim which is not supported by the evidence. Nothing is further from the truth. There is no testimony whatever which shows that a single rating, taken either directly or indirectly from the Dun & Co. book, was placed on a revision blank before being sent to a correspondent. We have dwelt upon this matter at greater length in the fifth portion of our brief, which relates to the use of the red bound book and merely wish at this point to correct the erroneous impression attempted to be created by appellants' brief.

Sixth. Counsel for appellants on page 17 of their brief have endeavored to lead the court to believe that the revision sheets placed in evidence, or many of them, never left appellee's office. This is shown to be incorrect by the testimony of Miss Frances H. Moore (Rec., p. 466 to 472), William D. Ferguson (Rec., p. 410), Burton W. Stadden (Rec., p. 839). Also see Rec., p. 343 to 382. We shall comment more fully upon this question in the first section of our brief.

Seventh. Counsel say that the defendants produced reports in reference to the seventy-three names with the greatest reluctance. This is not true. An inspection of the record will show that

there was a mere formal objection made, and that it was further stated to the master that it was impossible to find and collect all the reports called for upon such short notice as had been given. The cause was continued until the next day, and the defendants then produced the reports introduced in evidence in this cause, and also produced the red bound and the black bound books. (Rec., 318.)

Eighth. Counsel state (appellant's brief, p. 46) that it was admitted by both of the courts below that appellees were guilty of an unlawful appropriation of a part of appellants' copyrighted books. Counsel also refer on page 50 to what they term "conceded cases of piracy." There was no finding by the courts below that defendants were guilty of piracy. There was no "unlawful appropriation," nor were there "conceded cases of piracy." The Circuit Court of Appeals says (Rec., p. 1044):

> "It may be that the evidence would require a finding that with respect to a few names, an *improper* use of Dun's book was made *by an agent or correspondent of appellees'*."

The court does not say, neither does Judge Kohlsaat say, that this use was unlawful, nor that the cases referred to constitute a piracy. Judge KOHLSAAT said (Rec., 1022):

> "Here seems to be no attempt to coin money out of another's labor."

The Circuit Court of Appeals said (Rec., 1044):

> "These features are an ocular confirmation of appellee's testimony regarding the long continued, elaborate and comprehensive system of obtaining independent information. It is futile to claim that such a system, producing twenty-five per cent. more names than Dun and six times as many subjects of information concerning the persons named, is kept up at great ex-

pense, merely as a cloak. The proportion'' (referring to the few names in which an improper use of Dun's book might have been made by an agent or correspondent) ''is so insignificant, compared with the injury of stopping appellees' use of their enormous volume of independently acquired information, that an injunction would be unconscionable.''

Ninth. Appellants have endeavored to create the impression (pp. 65-66, and other portions of their brief) that the appellees tried to hide the use which they made of the red bound book, and of the Dun ratings which were contained in the red bound book. Counsel call attention to the answer, which does not refer to the red bound book, inferring therefrom that appellees were endeavoring to conceal their acts. To show how thoroughly counsel are in error, we call the court's attention to the fact that the answer was not filed until April 12, 1902. On January 25, 1902, nearly three months before, at the time application was made for a preliminary injunction, the affidavits of William Clancy and Burton W. Stadden were filed, and in these affidavits every element of the appellees' defense was contained. Counsel for appellants have failed to notice one of the paragraphs in the affidavit of Burton W. Stadden, appearing on page 91 of the record, as follows:

''Affiant further says that said red bound books were used as a guide in sending out inquiries for information and for comparison and for no other purpose; that in no case were any of the ratings contained in said red bound book copied or transferred into the reference books of defendants; and that no new name was included in the compilation of said reference book until reports or other original information was in the possession of said

association and that said red bound book was only used as a reference book in cases where revision reports differed greatly from previous rating in defendants' reference book, which did not occur in more than one per cent. of the names appearing in such revision of said reference book."

This affidavit was filed in the cause just a few days after the bill of complaint. The testimony of William Clancy, taken within two weeks after the filing of the bill (Rec., pp. 314 to 346) contains full and complete statements as to the entire use made of the red bound book. The red bound books were produced before the master by appellees thirteen days after the filing of the bill and immediately after the request was made for them. (Rec., 318.) The answer, filed three months later, was a pleading, in which it was not necessary to set forth the evidence in detail. There was a denial in the answer of mere copying, and this has at all times been denied. There has never, however, been any concealment of the exact use made of the red bound book.

Tenth. Counsel have quoted at great length on pages 74 to 76 of their brief, from the affidavit of Fred W. Wright, which they state was introduced in evidence. This affidavit can in no sense be considered as evidence. It is an affidavit filed and used only on the application for a restraining order immediately after the filing of the bill, before any testimony was taken in the cause. The motion for a temporary injunction was subsequently withdrawn. An objection to this affidavit was duly made. (Rec., 793.) Both Judge Kohlsaat and the Court of Appeals sustained the objection to

and refused to consider this affidavit. Counsel for appellants did not place Mr. Wright on the stand, although Mr. Wright accompanied them to the court room. (Rec., 346-347.) The other affidavits referred to by counsel are equally incompetent, as they cannot be considered as evidence.

Eleventh. Counsel on page 81 of their brief, quote from the testimony of Mr. Clancy. They leave out very material portions which must be read in order to properly understand this testimony. (Rec., p. 765 to 768.) For example, counsel state: "Mr. Clancy's testimony is that (under certain circumstances), it was, very seldom, a change was made in the rating." Mr. Clancy's complete answer is: "Very seldom. Might possibly give them a higher rating based on the correspondent's report."

BRIEF.

I.

ALL OF THE INFORMATION AND MATTER CONTAINED IN APPELLEES' REFERENCE BOOKS WAS DERIVED FROM ORIGINAL SOURCES AND WAS NOT COPIED FROM THE BOOKS OF THE APPELLANTS.

Rec., 762-763, 819, 637, 676, 696, 468, 658, 466, 470-472, 839, 343-382, 977, 408-412, 640, 641, 656, 657, 659, 679, 694, 698, 701, 702, 815.

II.

WHERE ONE BOOK IS ALLEGED TO BE AN INFRINGEMENT OF ANOTHER, PIRACY SHOULD BE SHOWN FROM A COMPARISON OF THE TWO BOOKS.

Am. & Eng. Ency. of Law, 2nd Ed., Vol. 7, page 595.

Boucicault v. *Fox*, 5 Blatchford, 92.

A COMPARISON OF THE DUN BOOK AND APPELLEES' BOOK SHOWS THAT THERE IS NO INFRINGEMENT.

Rec., 930, 516-525, 928, 527, 533, 545, 582, 583, 607, Defendants' Exhibit 147.

Rec., 950, 949, 971, 981, 610-2, Defendants' Exhibits 140, 141.

Rec., 845, 847, 932, 847, Defendants' Exhibits 141 (Rec., 348, 932), 142 (Rec., 948), 146 (Rec., 959), 147 (Rec., 961), 148 (Rec., 962), 149 (Rec., 962, 975), 79 (Rec., 165, 166), 73, 75, 76 (Rec., 257-259), 77, 78, 86, 92, 98, 107, 113 (Rec., 245, 249), 121, 122, 145, 124 (Rec., 276), 135, 138 (Rec., 201, 195), 139 (Rec., 200-1), 136, 137 (Rec., 267, 270), 82, 145, p. 193 (Rec., 174, 176), (Rec., 115, 116), 128, 132, 82, 80, 81, 33, 34, 36, 98, 99, 101, 124, 125, 169, 170, 171 (Rec., 5-6-10-11),

189, 202, 205, 276, 277, 278, 293, 294, 295, 11, 113 (Rec., 816), 288-300, 301, 312, 240, 243, 245-253, 271 (Rec., 816).

SIMILAR ERRORS AND MISTAKES ARE NOT NECESSARILY EVIDENCE OF PIRACY.

Mead v. *West Publishing Co.*, 80 Fed. Rep., 380.

III.

APPELLEES' BOOKS DIFFER VERY MATERIALLY FROM APPELLANTS' BOOKS AND ANSWER AN ENTIRELY DIFFERENT PURPOSE IN THE LUMBER AND KINDRED TRADES.

Rec., 865, 866, 867, 872, 873, 874, 875, 876, 877, 879, 880, 881, 882, 885, 886, 887, 888, 892, 893, 894, 895, 896, 902, 903, 904, 906, 907, 938, 912, 913, 921, 922, 923, 925, 926.

IV.

THE AUTHOR OR PUBLISHER OF A BOOK OR COMPILATION MAY MAKE USE OF ANOTHER'S BOOK AS A GUIDE TO AUTHORITIES, FOR SUPPLYING SUGGESTIONS AS TO THE TREATMENT OF THE SUBJECT AND FOR THE PURPOSE OF CHECKING THE ACCURACY OF HIS OWN WORK, AND SUPPLYING OMISSIONS THEREIN.

Drone on Copyright, page 396.
Kelly v. *Morris*, L. R., 1 Eq., 697.
Morris v. *Wright*, L. R., 5 Chan. App., 297.
Simms v. *Stanton*, 75 Fed. Rep., 6.
Edward Thompson Co. v. *American Law Book Co.*, 122 Fed. Rep., 922.
Pike v. *Nicholas*, L. R., 5 Ch. App., 263.
List Publishing Co. v. *Keller*, 30 Fed., 772.
Sampson-Murdock Co. v. *Seaver-Radford Co.*, 134 Fed., 890.
Jarrold v. *Houlston*, 3 Kay & J., 708.
MacGillivray on Copyright, 103.
Mead v. *West Publishing Co.*, 80 Fed., 380.
Dun v. *International Mercantile Agency*, 127 Fed., 173.
Moffatt v. *Gill*, 86 Law Times Report, 465.

A MATERIAL AND SUBSTANTIAL PART OF THE PRIOR WORK MUST BE TAKEN IN ORDER TO CONSTITUTE PIRACY.

Drone on Copyright, pages 413 and 523.
Am. & Eng. Ency. of Law, Vol. 7, pp. 572, 573 and 578.
Chatterton v. *Cave*, 10 L. R. C. P., 572.
Drury v. *Ewing*, 1 Bond U. S., 540.
Lewis v. *Fullarton*, 2 Beav., 11.
Mawman v. *Tegg*, 2 Rus., 394.
Bohn v. *Bogue*, 10 Jur., 421.
Spottiswood v. *Clark*, 2 Phil., 154.
M'Neill v. *Williams*, 11 Jur., 344.
Webb v. *Powers*, 2 Wood & M., 497.
Greene v. *Bishop*, 1 Cliff, 203.
Bailey v. *Taylor*, 1 Russ & M., 73.
Sweet v. *Cater*, 11 Sim., 572.
10 Fed. Cas., n. 5763.
Scribner v. *Stoddart*, 21 Fed. Cas., 12561.
Hanson v. *Jacard Jewelry Co.*, 32 Fed. Rep., 202.
Goldmark v. *Kreling*, 25 Fed. Rep., 349.
Arnsworth v. *Bentley*, 14 F. R., 630.

V.

THE ONLY USE MADE BY APPELLEES OF APPELLANTS' BOOK WAS TO HAVE TRANSFERRED CERTAIN NAMES AND RATINGS THEREFROM INTO A BLANK BOOK COMMONLY CALLED THE "RED BOUND BOOK," TOGETHER WITH CERTAIN NAMES AND RATINGS FROM BRADSTREET'S REFERENCE BOOKS. THE ONLY USE MADE BY APPELLEES OF THE RED BOUND BOOK WAS TO DIRECT APPLEES TO THE ORIGINAL SOURCES OF INFORMATION AS TO A FEW NEW NAMES, AND IN ABOUT 1 PER CENT. OF THE NAMES, FOR THE PURPOSE OF COMPARING THE

RESULTS REACHED BY APPELLEES' OWN INDEPENDENT EFFORTS WITH THE NAMES AND RATINGS IN THE RED BOUND BOOK.

IN THE CASE OF ALL SUCH NAMES AND RATINGS INDEPENDENT INVESTIGATION WAS MADE AT ORIGINAL SOURCES AND THIS ORIGINAL INFORMATION ALWAYS FORMED THE BASIS FOR AND CORRESPONDED WITH THE RATING AND INFORMATION GIVEN IN APPELLEES' REFERENCE BOOK.

IN NO INSTANCES WERE NAMES OR RATINGS IN THE RED BOUND BOOK COPIED, EITHER DIRECTLY OR INDIRECTLY, INTO APPELLEES' BOOK.

Rec., 762-763, 819, 637, 676, 696, 468, 658, 470, 675, 685, 808-810, 467, 807, 471, 695, 697, 766-768, 657, 659, 679, 698, 815, 816, 641, 767-768, 639, 642, 660, 677, 678, 679, 680, 765, 811, 812, 813, 408, 409, 410, 412, 836, 837, 791, 792.

VI.

THE DUN BOOK IS NOT COPYRIGHTABLE.

U. S. Const., Art. I, Sec. 8, par. 8.
8 Anne, Ch. 19, Secs. 1 and 4.
Sec. 4952 U. S. Rev. Stats.
Federalist, p. 338.
Appellants' Brief, 34, 61, 62.
II Blackstone, 407.

VII.

THIS PROCEEDING WAS NOT INSTITUTED IN GOOD FAITH, BUT WAS INSTIGATED BY THE FOSTER LUMBER MERCANTILE AGENCY, A RIVAL OF THE LUMBERMEN'S CREDIT ASSOCIATION, FOR THE PURPOSE OF INJURING THE LATTERS' STANDING AND OF LEARNING THE METHODS OF CONDUCTING ITS BUSINESS.

Rec., 440-447, 385-387, 722-736-755, 744, 719, Defendants' Exhibits 140, 141.

Ex Parte Jaynes, 70 Cal., 638.

Ex Parte Brown, 7 Mo. App., 494, and 72 Mo., 83.

2 Fonb Eq. B., 6 Ch. 8, Sec. 1, Note A.

Walker v. *The Granite Bank*, 44 Barb., 39.

Mott v. *The Consumers' Ice Co.*, 52 How. Pr., 148.

VIII.

THE COURT OF APPEALS DID NOT ERR IN DENYING THE PETITION OF APPELLANTS FOR A REHEARING OR IN REFUSING TO GRANT THEM LEAVE TO FILE A SUPPLEMENTAL BILL IN THE NATURE OF A BILL OF REVIEW.

THE AFFIDAVITS FILED WITH THE PETITION WERE IMPROPER BECAUSE:

First. AFFIDAVITS CANNOT BE RECEIVED OR CONSIDERED ON A PETITION FOR REHEARING.

Act Creating Court of Appeals, approved March 31, 1891, Secs. 2, 4, 5, 6, 10, 11, 14, 15.

Russell v. *Southard*, 12 Howard, 158.

Gregory v. *Pike*, 67 Fed. Rep., 852.

Second. THE ALLEGED NEWLY DISCOVERED EVIDENCE WAS CUMULATIVE AND MERELY TENDED TO IMPEACH TESTIMONY GIVEN IN THE COURT BELOW.

Ency. Pl. & Pr., Vol. 3, p. 583.
Southard v. *Russell*, 16 Howard, 569.
Society of S. v. *Watson*, 77 Fed. Rep., 514.
Jones v. *Robson*, 30 Ga., 826.
Burson v. *Dosser*, 1 Heisk. (Tenn., 754.)
Kern v. *Wyatt*, 89 Va., 885.
Kinsell v. *Feldman*, 28 Iowa, 497.
Owens v. *Forbes*, 9 Fla., 325.
Sewing Mac. Co. v. *Dunbar*, 32 W. Va., 335.
McDougald v. *Dougherty*, 39 Ala., 409.
Stevens v. *Hey*, 15 Ohio, 313.
Taylor v. *Boardman*, 25 Mich., 527.
Ketchum v. *Breed*, 66 Wis., 85.
Rogers v. *Marshall*, 13 Fed. Rep., 59.
Story Eq. Pl., 413.
Hines v. *Driver*, 100 Ind., 325.

Third. THE AFFIDAVITS WERE FILED WITHOUT LEAVE OF COURT.

ARGUMENT.

I.

ALL OF THE INFORMATION AND MATTER CONTAINED IN APPELLEES' REFERENCE BOOKS WAS DERIVED FROM ORIGINAL SOURCES AND WAS NOT COPIED FROM THE BOOKS OF THE APPELLANTS.

In our statement of uncontroverted facts, we referred to the different sources of information which were used by the defendants in making up their reference book, giving the specific pages in the record upon which such statement is based. These consisted principally of the following:

Revision Blanks.

Financial Statements.

Personal Reports.

Trade Reference Reports.

Bank Reference Reports.

Subscribers' Reports.

Travelers' Reports.

Clipping Bureau Reports.

Law Bulletin Reports.

Trade Paper Reports.

Subscribers' Customers Lists.

Delinquent Reports from Subscribers.

Collection Department Reports.

Inquiries from Subscribers.

Special Information from Special Agencies.

Country Yard Lists.

Prepared Lists of Dealers and Manufacturers from Railroad Companies.

Reports from Secretaries of Retail Lumber Dealers' Associations.

Information from Subscribers' Weekly Reports.

Correspondents.

(Rec., 762-763, 819, 637, 676, 696, 468, 658.)

Nowhere in the testimony is there any evidence upon which these facts can be controverted. There is also an abundance of testimony that the revision reports, etc., were received from correspondents.

Miss Frances H. Moore, a witness called, not on behalf of appellees, but on behalf of appellants, testified (Rec., 466) that she had been employed by the defendant association and its predecessors for twenty years; she said:

"We revise all the states, every city in the state, get reports and revise the ratings. A BLANK IS SENT TO EVERY TOWN for a full report as to dealers in lumber and kindred trades. This is true of each of the states revised. When these revision sheets come back to the association they are put in alphabetical order and checked up and turned over to the raters. (Rec., 470.) I have charge of the sending out of these revision blanks. If the revision blank is not returned with the report the first time in any case, a second blank is sent to another correspondent. (Rec., 471.) If this second blank was not returned, a blank was sent to one of the dealers of the town. In case the first blank was not returned by the correspondent, a postal card was sent to each one. This revision work was done right up to the time the book went to press." (Rec., 472.)

Appellants' main witness was William E. Ferguson, a former employe of appellee, then an employe of the Foster Lumber Mercantile Agency, and a hostile witness. Even Mr. Ferguson said (Rec., 410):

"The revision blank referred to is a portion of the print, constituting one town cut from the regular print of the office. As a rule, that is pasted upon a blank which they have for that purpose, and any additional names that have been added during the year are written on that blank and sent to the local correspondent. He is supposed to make his notations of their net worth, and such information as he has and return it. When I refer to the print, I mean a copy of the printed portion of the last previously published book. These revision blanks were sent out over these states I have named for that revision." (Rec., 410.)

In addition to the testimony of Miss Moore and Mr. Ferguson is the testimony of Burton W. Stadden (Rec., 839) that these revision blanks were mailed to the correspondents in the regular way, and were received by mail in the regular way, and at the time they were received by mail they were placed on file in the office, and when the rating was done these reports were furnished to the raters and corrections made in the new reference books from these revision blank reports. All of the reports and original information, except Defendants' Exhibits 72 to 139, were produced by defendants in response to a subpoena *duces tecum* served upon them by complainants. (Rec., 343-382.) About half of them were offered in evidence by complainants themselves, and the other half offered for identification by them, and offered in evidence later by defendants. (Rec., 977.) These documents them-

selves bear inherent evidence of having passed through the mails.

Mr. Ferguson does not bear out the contention of appellants that appellees did not go to original sources for their information. Inasmuch as Ferguson is the main witness for appellants, we quote at length from his testimony. He said:

"In doing this revision work, my sources of information was such blanks as were received in the office, such postal cards as reached the office, the red book (not red bound book) and reports on file. (Rec., 408.) I refer to the regular revision blanks which are sent out by the company, and other blanks that they use for that purpose. The blanks that the Lumbermen are in a habit of sending out, local information blanks to subscribers. Such blanks as are sent to local correspondants, postal cards which they send out, asking for the names of lumber dealers in their town. I don't at the present time remember any delinquent reports. There may have been some though. The personal statements are part of the regular blanks sent out from the office. We have them. They are separate from the revision blanks. There was another blank occasionally sent out—a correspondent's blank which was a report upon individual persons. I refer to local correspondents. There are local correspondents, also trade references. We had such blanks. (Rec., 409.) I fail to remember whether Clancy published a tracer or not. Yes, we did, we also have a tracer and I recall the tracer because I have written reports on them. Do not remember whether I also had reports from the collection department. Don't remember of ever handling such a report, but undoubtedly we had

them on file. Undoubtedly those comprise a portion of the files I spoke of. Also had numerous newspaper clippings from different newspaper clipping bureaus. The office book is the book generally termed the black book, I believe. Remember a book, canvas covered book, in which notations were made of changes from day to day through the year, perhaps referred to sometimes as the office tickler. The tickler is usually what is generally termed the black book. Do not recall an office book or office tickler in which a record of all the daily changes and new names are inserted. I presume that is used by the correspondents, however, do not remember that I worked on such a book myself. I may have done so though. Did also refer to or use what is known as the monthly supplement. Delinquent reports were not used, as I remember daring that revision I had reference to.

The files included such information as we had previously on record upon firms throughout the United States. (Rec., 410.) The revision blank referred to is a portion of the print constituting one town, cut from the regular print of the office. As a rule, that is pasted upon a blank which they have for that purpose, and any additional names that have been added during the year are written in on that blank and sent to the local correspondent. He is supposed to make his notations of their net worth and such information as he has, and return it. When I refer to the print, I mean a copy of the printed portion of the last previously published book. These revision blanks were sent out over these states I have named, for that revision.

The personal statement is a blank which I sent to the person upon whom the report is wanted, ask-

ing him to give a full and detailed statement of his financial condition. There are references included in the personal statements. You can't judge how many. Some may give two, some three, some five or six. Ordinarily they are trade references. Occasionally, bank references. Occasionally had the personal reports which I mentioned before, giving only one person, also cards giving the names of dealers in that town. (Rec., 411.) There was 186 pages all told that I handled in that revision. It would be impossible to estimate how much in volume or bulk there was of this information I handled. Never had it figured. Can't approximate because I never had it anywhere near together. There was a considerable volume of it. That naturally occupied the principal part of these two or three months I spent in this revision. The whole thing is part of the revision. That naturally is the work that takes most of the time. The mechanical work of writing out the result of my investigation of these different reports took a comparatively short time as compared with the time occupied in examining the reports. The actual writing out was practically very little because the majority of the time is taken up in figuring what ratings should be applied to different persons. The only thing that takes any time to amount to anything is writing in new names. Other changes are merely putting a letter in, or a number or two, and crossing out the other. Substantially all of my time was employed in examining these records and reports." (Rec., 412.)

Miss Frances H. Moore, the witness above referred to, also testified:

"We revise all the states, every city in the state,

get reports and revise the ratings. (Rec., 466.) A BLANK IS SENT TO EVERY TOWN, including all the names of the dealers in that town for a full report as to dealers in lumber and kindred trades. This is true of each of the states revised. The town is pasted on the blank, the names are all written in alphabetical order in the proper margin. This blank is called a revision blank. The slip is cut from the association reference book containing the name of the town and the dealers as they appear in our previous edition of the reference book. (Rec., 467.) In addition to this slip, all the names that have come in since the edition of the book. These additional names are taken from our office book. Our office book is a regular book with interleavings of ruled paper. It is one of the last editions of the reference book. All changes, all new names, everything that comes up in reference to anything in our line is kept on the margin of the book. All new towns with the names and everything pertaining to it. All changes or new matter that come up between the issues of the book. (Rec., 467.) When these revision sheets come back to the association they are put in alphabetical order and checked up and turned over to the raters. Besides the revision sheets, the raters have before them the office book and all the files, card files and previous revisions. I have charge of the sending out of these revision blanks. (Rec., 470.)

If the revision blank is not returned with the report the first time in any case, a second blank is sent to another correspondent. (Rec., 471.) If this second blank was not returned, the blank was sent to one of the dealers in the town. In case the first blank was not returned by the correspondent, a postal card was sent to each one. This revision

work was done right up to the time the book went to press." (Rec., 472.)

Elmer Wheaton testified as to the same sources of information, which were used in the revision work:

"I took up the first revision blank before me, compared it with the town in the printer's copy to see if any changes should be made, commencing with the first name on the revision blank, and if any changes were suggested in this blank I made them in the printer's copy, and if anything seemed to be lacking, I wrote to some source of information, generally at the town from which the blank came. (Rec., 639.) I referred very little to these other sources of information, as a matter of fact. I used them in the same manner I used the revision blanks after I got through with the blanks. Took up the information from the various sources referred to. Sometimes I was compelled to refer to the statements which were in the office on file, but not before me with the revision blanks. Referred to the files where there was any question in my mind regarding the rating. I mean, regarding a change in rating, or classification. That is, the line of business. (Rec., 640.)

I also worked on the revision of the July, 1901, edition of the Association book as a rater. That work was done just the same as the work in the one following. Pursued the same course I did in the one following. The one we were just talking about. Worked also as a rater on the January, 1901, edition. (Rec., 641.) Did the work the same as the others."

Heber Fuller, a rater of the defendant association, testified:

"I worked on the January, 1902, edition of the Lumbermen's Credit Association book. (Rec., 656.) The main or primary material used was a blank called a revision blank, each blank covered a town, and we had a lot of incidental information beside. (Rec., 657.) I made memorandums during the revision, in a black bound manilla book, ruled off for that purpose. It contained a copy of the previous issue of the Association book. These towns were cut out alphabetically and put in a black bound book and the changes made against those names and lists. The first thing I did was to take the revision blank covering the towns I was working on; make the changes that appeared in the blank, in case there was any. Where the information on the blank did not entirely make clear, I referred to my regular files. They contained special reports, special statements that accumulated during the past year. We also had a lot of information of the same sort gotten in connection with the revision work, personal reports, and personal statements; those did not go into the files until the revision was over with. We had what we might call incidental forms of getting information (Rec., 657-658), (witness enumerates the different forms mentioned by Mr. Stadden and Mr. Clancy).

In cases where the information contained on the revision reports was incomplete or unsatisfactory, I made a thorough investigation in various ways. (Rec., 659.) It depended altogether upon the case. If there was a case where our previous rating had shown a man worth $5,000 and the revision blank showed a heavy increase, something like $25,000 to $30,000, I would investigate to know how it came about, whether our previous rating had been too low, or whether the man had made money in the

meantime justifying the increase. I made the investigation commonly by letter to the correspondent in the town, also by a personal statement blank. In similar cases I would refer to the files. I would go to the file case and if it did not have anything to throw light on the matter, I would write. In cases where I had no revision blank from a town a postal card was used most often; that was the course. Towns like that were not very frequent. IN MAKING THESE CHANGES IN RATINGS I ACTED UPON THE INFORMATION BEFORE ME THAT HAD BEEN OBTAINED FOR THAT PURPOSE by our investigations through our correspondents and various sources of information. (Rec., 659.) I made no change of rating where I had no revision blank or other original source of information before me."

A. L. Kneffler (Rec., 674), testified that he worked upon the revision of the January, 1902, edition of the defendants' reference book, and mentioned the different sources of information. He said:

"I did not put any new name in the printer's copy with or without a rating, that I did not have original information of some character before me upon which to base it." (Rec., 679.)

Philip C. Howard testified that he worked only on the revision of the January, 1902, edition of the defendant Association's reference book. (Rec., 694.) He also mentioned the different sources of information and said:

"The changes I made in the printer's copy in that portion of the revision work which I did, were based on original information from the correspondent, and from the dealer himself. (Rec., 698.) There were a few cases, not many, in which I did not have complete and satisfactory information before me

before the work was completed. (Rec., 701.) Work had been commenced several months before the edition of the book, which gave ample time, except in a very few cases. These cases I held over for further investigation. Made no immediate use at all, holding them to make such change as might occur in the supplement that we issue from time to time. In such cases I fixed no rating for the January, 1902, edition, unless I had information at hand. In every case, without exception, where I did not have complete and satisfactory information before the book of the Association was issued, and I referred to Dun and Bradstreet's ratings and found they had rated such persons, I did not fix any rating on our book. That is a fact." (Rec., 702.)

Mr. Stadden said (Rec., 815) that the raters were instructed to use nothing but original information.

Mr. Clancy and Mr. Stadden also testified at length in regard to the different sources of information. Their testimony is largely undisputed and the gist of it will be found under the head of uncontroverted facts.

Where one publisher or author is supposed to have copied from another, one test of piracy is to compare the two books, with a view to the discovery of similarities. Upon the reference to Master in Chancery Bishop of the motion for a preliminary injunction in this case, complainants immediately called upon defendants to produce all the original information in their possession referring to seventy-three persons, firms and corporations, whose ratings, given in defendants' book were claimed by complainants to be similar to the ratings given the same persons, firms and corporations in com-

plainants' book. Defendants produced over 300 reports and other documents containing original information as to each and every one of the seventy-three persons, firms and corporations referred to. (Rec., 343-382.) These reports contained original information upon which the ratings given the seventy-three persons, firms and corporations in the defendants' book were based. The seventy-three persons, firms and corporations referred to were selected by the complainant from more than twenty different states as the cases showing the clearest indication of copying on the part of the defendants after the most careful and thorough examination and comparison of defendants' book with complainants'. These names, which were attached to the Prudence affidavit, were the basis of the motion for temporary restraining order and temporary injunction. Yet the production of the original information above referred to as to these persons, firms and corporations, shows that the charges of the complainants with reference thereto were entirely groundless, and that they had falsely asserted that defendants' book was a copy, in whole or in great part, of complainants' book, or compiled without any original sources of information on which to base the information and ratings contained in defendants' book.

If the capital ratings given in the Dun book and in the Lumbermen's Credit Association reference book were each correct, it must be plain to any one that in a large number of instances a similarity of ratings would be unavoidable—for example, if a person engaged in the lumber business in a certain town was worth $7,000 or $8,000, the correspondent to whom the inquiry was sent, would naturally give the person a capital rating of from

$5,000 to $10,000. In many cases, especially in the smaller towns, it no doubt occurs that inquiries were sent to the same correspondent both by Dun and the defendant Association.

Therefore, it does not follow because there are a number of names in defendants' reference book with capital ratings the same as ratings given the same person in complainants' book, that the former was copied from the latter.

The presumption, therefore, which would ordinarily attach to similarities between two books, would have little bearing upon the determination of whether piracy existed in this case, as is very strikingly indicated by the documents introduced in evidence with respect to these seventy-three names.

There was not a single instance where complainants called for original information with respect to any name of the seventy-three contained in this list, which the defendants did not produce. Defendants' book contains upwards of 60,000 names. If its reference book was but a servile imitation of complainants' book, and were copied "in whole or in great part" from complainants' book, as alleged, is it not strange that the complainants have not called the court's attention to a single name of the seventy-three concerning which the defendants' failed to produce information from original sources? Complainants to aid them in their effort had the advantage of the information of former employes of the Lumbermen's Credit Association, one of whom was particularly bitter against the latter, on account of having left defendants' employ under a cloud.

The overwhelming weight of the evidence, as shown by the testimony of Miss Frances H. Moore,

(called as a witness by the complainants), Burton W. Stadden, William Clancy, Elmer Wheaton, Heber Fuller, A. L. Kneffler, and Philip C. Howard, is that in every instance they had original information before them on which they based the rating given to each party, and that in no instance was a name or rating copied directly or indirectly from the red bound book; that there was original information for each and every one of the 60,000 names contained in the defendants' reference book. This testimony is uncontradicted.

With this mass of original evidence, gathered at great cost to the defendants, what possible object or purpose could the defendants have in copying ratings from the red bound book; or on the other hand, if it was the purpose and custom of defendants to copy the ratings and names from the red bound book, why this effort on their part to secure original information, if no use was to be made of it in compiling its reference book?

We submit, therefore, that the evidence shows conclusively that defendant had original sources of information in its possession and that its book was compiled therefrom, and that it was not copied nor any part of it, from complainants' book.

The Court of Appeals was certainly justified in the conclusion that "*it is futile to claim that such a system producing twenty-five per cent. more names than Dun and six times as many subjects of information concerning the persons named is kept up at great expense merely as a cloak.*"

II.

WHERE ONE BOOK IS ALLEGED TO BE AN INFRINGEMENT OF ANOTHER, PIRACY SHOULD BE SHOWN FROM A COMPARISON OF THE TWO BOOKS.

In the Amer. & Eng. Ency. of Law, 2nd Ed., Vol. 7, page 595, the principle is laid down as follows:

> "The similarity between the alleged infringement and the work of which it is claimed to be a piracy, should be shown by introducing both works in evidence."

In the case of *Boucicault* v. *Fox*, 5 Blatchford. 92, the court said:

> "Whenever matter which is in print or in writing is presented to a court or a jury for the purpose of construction, or to establish proof of identity, the resemblance or dissimilarity of the documents themselves must be presented for the inspection of the triers, or on proper reason for their non-production being shown, their contents must be proved. The rule is trite, familiar and imperative."

It has been suggested that where one book is alleged to be a piracy of the other, similar mistakes in the latter edition tend to support piracy. Even though this is sometimes true, and while there are many mistakes which would be of so patent a character as to be almost presumptive evidence of piracy, still, this is a dangerous rule to follow in all instances. Nor, is it a rule that has been followed by the courts, except where the mistakes are such that any rational person could not free his mind from the conviction that one book was copied from the other. Where the mistakes, however, are such as the average person would make in the first instance in securing original information, the same presumption of piracy would not follow.

The case of *Mead* v. *West Pub. Co.*, 80 Fed. Rep., 380, is decisive upon this question. Over twenty-one examples of similar mistakes occurred, such as the following: Morris for Norris; Moore for Moon; 114 for 115; Lundy for Pierson, and many other mistakes equally as palpable. The two books in question were Andrews' Stephen's Pleading and Shipman's Stephen's Pleading. The court said, in reference to these errors:

> "The matter comes down, really to the question of taking the authorities in one book, and inserting them in the other. No case has been pointed out to me, and I do not think one exists, as far as I have been able to observe by an examination of the books, where sentences have been transferred from one book to the other; but complaint is made that on the same subjects, references to text book and reports were taken from plaintiff's book and inserted in defendants' second edition, and that this is an invasion of the plaintiff's copyright. It certainly would be imposible in treating the different rules of pleading, and the exceptions to those rules, their extent and limitation, not to express the same ideas, though probably in different language, for the same ideas would have to be expressed in both books, especially where the same original work was taken as a basis of those two books. That could not be avoided. The authorities upon which these rules and the exceptions and limitations rest would naturally be the same and the different authors treating the subject would ordinarily refer to the same authorities, if they made the same research. Therefore it is not a matter of surprise to find the same authorities cited to substantially the same proposition. It is claimed on account of the fact, which is doubtless true, that about a dozen of these authorities occur in which the same errors appear in both of these books, that these citations were copied, without any examination of the original authorities, from Mr. Andrews' to the defendants' book. In the

course of the argument my attention has been called to many more of such cases, in which it appears that there must have been further research made by Mr. Clark, even if he obtained these references from the plaintiff's book, for the reason that in many of these instances, he quotes an additional book where the citation may be found. For instance, where Mr. Andrews' book gives the American decisions as his authority, Mr. Clark gives the citation in the original reports where the case may be found. There is also another class of cases where the same reports appear in the series published by the West Publishing Company, such as the Northeastern and other reporters, and in many of these cases Mr. Clark has added to the original reference the page and volume of these reporters where the case may be found. So there is this evidence, as far as it goes, that those cases were not just simply copied from Mr. Andrews' work, but that there was further work and labor expended upon them by Mr. Clark. How far, perhaps, we cannot tell, but certainly to the extent of ascertaining and showing whether these cases in the original reports were in other publications or in the West series, and of making the notations accordingly. THE NUMBER OF CASES IN WHICH IT IS CLAIMED THERE IS PROOF THAT THESE AUTHORITIES WERE TAKEN FROM MR. ANDREWS' BOOK BECOMES SMALL. IN SOME OF THEM, OF COURSE, THE MISTAKES MAY HAVE BEEN OBTAINED BY REFERENCE TO ANOTHER AUTHORITY IN WHICH THE SAME MISTAKE OCCURS; AND, AS SUGGESTED, THEY MAY HAVE BEEN TAKEN FROM MR. ANDREWS' BOOK, AND AFTER BEING EXAMINED IN THE ORIGINAL REPORTS, THE MISTAKE MAY HAVE BEEN OVERLOOKED AND NOT CORRECTED.

"The question, upon the whole case, is whether there has been such an appropriation of the work of Mr. Andrews as to injure the plaintiff in this case to such an extent that the sale of defendant's book should be restrained by an injunction. After full and careful consideration of the whole case, I do not come to

that conclusion. It seems to me that this injunction ought not to be granted and the motion will be denied."

There are certain books which are necessarily similar if correct. There are others which are necessarily dissimilar. If two stories or plays contained many similarities this would almost be *prima facie* evidence of piracy. However, with a Gazetteer, directory, or mercantile reference book the case is entirely different. The object of the Dun book is, as far as the lumber trade is concerned, to give names of all men engaged in that line of business in the United States and the amount of capital which they are supposed to possess and their credit standing. The book of the defendant association purports to report the capital and method of pay of persons engaged in the lumber trade. Each book is rating the same identical persons, who possess the same identical wealth. Although the two books are different in their objects and in many other respects, yet, as far as giving the names and capital ratings is concerned, their purpose is the same. Now, if each book is correct, the names and capital ratings in the two will necessarily be similar if not identical, even though both derive information from original sources. Any dissimilarity means that one or the other of the two books is incorrect. Suppose a man to be worth $5,000, $6,000, $7,000, $8,000, $9,000, or $10,000, the only correct capital rating which he can be given in the two books according to the keys is $5,000 to $10,000, and if the Dun book rated him at $5,000 to $10,000, and the defendant association book rated him at $5,000 to $10,000, this would not mean that the defendant association book was a copy of the Dun book. It would only mean that each book was cor-

rect in its estimate. Consequently if the two books were compared and the defendant association's book was shown to have capital ratings similar to the Dun book in every instance, even this would not be evidence of copying. However, a comparison of the two books shows that the capital ratings are in the majority of cases very dissimilar. In about 90 per cent. of the names contained in the defendants association's book, both of the July, 1901, and January, 1902, editions, a different capital rating is given from that given by the Dun agency. In the defendant association's book there are about 60,000 names. 16,089 *of the names appearing in the January, 1902, edition are not in the Dun book at all.* (Rec., 930.) The testimony of appellants' witnesses, who made the comparisons of the two books, is *that there were a large number of names of lumber dealers, woodworkers and manufacturers given in the appellees' books that are not found in appellants' reference books.* This shows that the defendant association's book is an entirely independent publication, much more comprehensive and accurate than the Dun book as to the lumber trade and not a servile imitation and copy of the latter.

Mr. Stein, one of the witnesses produced by the appellants, made a comparison of the September, 1901, reference book of Dun & Co. with the January, 1902, reference book of the defendant association, according to a schedule prepared by counsel for that purpose and has testified as to the results of the comparison. We have prepared here a tabulation compiled from Mr. Stein's testimony, showing the number of names in the defendant Association's book, the number of names in the defendant Association's book not appearing in the

Dun book, the number of names appearing in both books, the alleged similar ratings, alleged similar capital ratings, alleged similar reference ratings and blank ratings. The following is the tabulation (Rec., 516-525):

STATE.	Names in L. C. A.	Not in R. G. D. Books.	In both Books.	Sim. Rating.	Cap. Rating.	Sim. Ref. Rating.	Blank Rating
Mich	2974	715	2259	868	571	109	188
Minn	1488	348	1140	587	232	284	71
Dis. Man	271	29	242	100	49	14	37
Miss	877	364	503	195	127	20	48
Ala	944	378	566	234	150	22	62
Montana	172	70	102	45	33	7	5
Nevada	19	6	13	5	4	1	
N. Car	1324	573	751	274	166	41	67
Idaho	213	99	114	31	15	3	13
Maine	1519	528	991	332	239	31	62
Utah	193	52	141	40	32	3	5
Florida	453	167	368	113	46	21	46
Wash	986	407	579	221	64	52	105
Wyoming	54	14	40	14	19	2	2
W. Va	881	444	437	199	140	24	35
Wis	1890	399	1491	621	386	136	99
Georgia	1120	486	652	264	145	31	88
Texas	1245	370	875	438	199	161	78
Virginia	1136	443	693	249	184	20	45
Vermont	886	333	553	158	110	13	35
Tenn	1352	631	721	243	143	35	65
Mass	1690	471	1219	484	336	40	108
Conn	663	163	500	186	144	11	31
Del	179	42	137	49	38	2	9
R. I.	166	27	139	63	46	2	15
Arizona	64	18	46	16			
Ark	1125	445	680	271			
Calif.	1158	295	863	398			
Col.	331	93	228	90			
Dis. of Col.	48	8	40	14			
Ill.	2693	410	2283	1011			
Ind.	211	72	139	76			
Iowa	1791	304	1487	891			
Kansas	941	146	795	430			
Kentucky	1274	558	716	261			
Louisiana	585	218	367	185			
Maryland	723	186	597	201			
Pennsylvania	4217	993	3726	1373			

STATE.	Names in L. C. A.	Not in R. G. D.	In both Books.	Sim. Rating.	Cap. Rating.	Sim. Ref. Rating.	Blanks Rating
Oregon	602	262	340	119			
Oklahoma . . .	393	207	186	101			
New Mexico .	71	26	45	20			
S. Carolina . .	573	238	335	117			
S. Dakota . . .	401	99	302	175			
N. Dakota . . .	406	93	313	192			
New Jersey .	844	183	661	247			
N. Hampshire.	1141	402	739	240			
Ohio	3115	822	2293	798			
Nebraska . . .	832	140	692	424			
New York . . .	4914	1158	3756	1522			
Missouri	1685	429	1256	616			

(Rec., 516-525.)

The total number of names checked by Mr. Stein in the appellees' January, 1902, reference book, on the left hand side of the names, which he considered as similar, out of 60,000 appearing in the L. C. A. book, was 14,205. (Rec., 928, 527.)

On cross-examination Mr. Stein admitted that he counted many ratings as similar which should not have been so counted. For example, if, after a name in the L. C. A. book, there was no capital or credit rating given, but merely a reference to the purchasing department, Mr. Stein counted this as similar to no rating in the Dun book. (Rec., 533.) If the figure "100," which meant "no information at office," followed the names, Mr. Stein counted this the same as a blank rating in the Dun book (Rec., 545), "7" meaning "if interested, inquire at office," "89" meaning "should not be sold without inquiring at office," were all treated as similar to a blank or no rating in the Dun book. (Rec., 582, 583.) "H" in the L. C. A. key, meaning from $100 to $500, was treated as equivalent to "M" in the Dun key, which means less than $500. These are not exactly similar ratings. (Rec., 607.) "G" in the L. C. A. book, meaning $500 to $1,000, was treated

as equivalent to "L" in the R. G. Dun book, meaning less than $1,000. "B. C." in the L. C. A. book, meaning $10,000 to $15,000, was treated as equivalent to "F" in the Dun book, meaning from $10,000 to $20,000. (Rec., 607.) It is very clear that a man might be worth $18,000 and be rated by the Dun book as "F," but he would not be rated in the L. C. A. book as "B. C.," because $15,000 was the limit. It is very clear that these two ratings are not the same. There is a range of $5,000 in one key which bears absolutely no similarity to the other. "C" in the L. C. A. key, meaning from $15,000 to $25,000, was treated as equivalent to "F" in the Dun key, meaning from $10,000 to $20,000. Here is a range of $5,000 of similarity and $10,000 of dissimilarity, and yet Mr. Stein in his compilation has considered the two as similar.

"A. A." in the L. C. A. key, meaning from $75,000 to $100,000, was treated as equivalent to "C" in the Dun key, meaning from $75,000 to $125,000. (Rec., 607.) Here is a range of $25,000 of dissimilarity.

Mr. Tuttle, a witness called on behalf of appellees, made a careful comparison of the 14,205 ratings in the L. C. A. book, which were claimed to be similar to those in the Dun book, and found that 7,817 (Rec., 950) of them were improperly called similar by Mr. Stein for the reasons above set forth. For instance, a statement that inquiry should be made at office should not be classed as a similar capital rating, and hence Mr. Stein's comparisons were not fair, and the investigation made by Mr. Tuttle shows that there were only 6,388 like capital ratings. (Rec., 950.) There were about 60,000 names in all in the book. This would show a trifle over 10 per cent. of like capital ratings. If both

books were correct or if we compiled our book from theirs as charged there would be 100 per cent. According to the tabulation made by the witness Stein, only 22 per cent. of the capital ratings in the L. C. A. book are similar to those in the Dun book, but when his comparisons were sifted out to the proper conclusions reached by Mr. Tuttle, it showed that the similarities in ratings which should exist in every case existed in only about 10 per cent. of the names contained in the L. C. A. book. Mr. Knefler also found that of these 6,388 names and ratings there were 950 in which there are marked differences in the spelling and business classification, so that the total of the similar names and classifications and ratings in the two books is reduced to only 5,437. (See Exhibit 147 of defendants.)

There were 16,089 names in the L. C. A. book and 488 towns not contained in the Dun book at all. (Rec., 930, 949 and 971.) It is a striking circumstance that there were three times as many names in the L. C. A. book not appearing in the Dun book as there were similar capital ratings. Does this show a base imitation, a servile copying of the Dun book, or does it show that the publishers of the L. C. A. book are more aggressive and thorough in their efforts to secure complete information than appellants?

As was aptly said by the Court of Appeals:

> "*On every page of appellee's book the names that are not given in Dun's* and the names regarding which the information does not exceed or substantially vary from that given in Dun's bear the relation of three to one."

A comparison of July, 1901, reference book of the appellees, and appellants' March, 1901, book, was also made by complainants, with the following results (Rec., 981):

STATE.	Names in L. C. A.	Not in Dun July, '01.	In both books Mch., '01.	Ref. ratings similar.	Blank ratings similar.	Total similar according to schedule.	Not exactly similar.	Exactly similar, including Bank and Reference Ratings.
Mississippi . .	819	393	426	18	57	158	25	133
Missouri . . .	1559	421	1138	149	44	606	200	406
Montana . . .	153	69	84	5	5	35	10	25
Nebraska . . .	812	182	630	212	17	399	83	311
Nevada	19	7	12	1	1	6	4	2
N. Hampshire	908	453	455	11	47	198	50	149
N. Carolina .	1165	480	685	26	66	247	52	195
N. Dakota . .	370	94	276	101	14	149	11	138
Ohio	3045	967	2078	47	96	786	376	410
Oklahoma T.	297	123	174	65	4	88	8	80
Oregon	576	245	331	14	57	130	14	116
Pennsylvania	3668	918	2750	103	210	1192	389	803
Rhode Island	138	34	104	1	9	41	11	30
S. Carolina .	467	174	293	9	46	110	18	92
S. Dakota . .	373	95	278	102	10	161	21	141
Tennessee .	1322	641	681	36	61	241	52	189
Texas	1266	422	844	152	62	393	75	318
Utah	188	60	128	3	4	46	21	25
Vermont . . .	829	364	465	8	30	159	29	130
Virginia	989	424	565	18	34	192	64	128
Washington .	905	405	500	35	88	183	15	168
W. Virginia .	776	391	385	23	28	151	43	108
Wisconsin . .	1806	439	1367	138	80	580	228	252
Wyoming . .	51	18	33	2	1	14	4	10
Manitoba . .	269	48	221	13	30	95	15	80
N. Jersey . .	809	208	601	15	51	214	79	135
N. Mexico . .	71	23	48	5	8	24	3	31
New York . .	4652	1414	3238	99	367	1332	409	923
Illinois	2599	494	2105	128	131	974	404	570
Michigan . .	2925	752	2172	100	189	858	279	579
Minnesota . .	1453	435	1018	243	55	510	105	305

(Rec., 610-12), for the following:

	Names in L. C. A. book.	Not in R. G. Dun book.	Similar Rating.	Similar Reference
Alabama	848	370	158	21
Arizona	58	11	19	4
Arkansas	952	372	229	56
California	1141	312	416	131
Colorado	310	103	85	26
Connecticut	577	140	146	8
Delaware	159	42	45	1
District Columbia	43	11	10	1
Florida	437	167	127	23
Georgia	1097	494	230	24
Idaho	207	99	38	4
Indiana	2269	499	594	45
Indian Territory	197	62	62	50
Iowa	1738	346	796	401
Kansas	916	161	412	196
Kentucky	1244	539	258	22
Louisiana	527	198	146	28
Maine	1306	531	268	23
Maryland	627	154	163	15
Massachusetts	1527	472	378	31

This tabulation also shows the same results as the comparison of the two later editions of the respective works, and we may derive the same conclusions therefrom. When the reference ratings are eliminated, it will be found that there are less than 20 per cent. of similarities with respect to capital ratings, and that there are 14,180 names in the L. C. A. July, 1901, book which did not appear in the Dun book at all.

We also call the attention of the court to appellees' Exhibits 140 and 141. Exhibit 140 is a copy of the January, 1902, edition of the L. C. A. book. (Rec., 845-847.) It has been compared with the September, 1901, edition of the Dun book and shows in a very plain and distinct manner how little there actually is in common between the two books. The check marks to the left

indicate the names claimed by complainants to have a similar rating. The cross in red ink to the right indicates the names and towns not appearing in the Dun book at all. (Rec., 932.) The notations in pencil to the right of the names claimed to have a similar rating show the actual differences in the name, rating and classification given in the Dun book. The blue check marks to the left indicate mere references (improperly called similar capital ratings by complainants). (Rec., 847.) If there were no other evidence introduced in this case except this one exhibit, we believe it would be very plain to the court that appellees' book could not be a pirated edition of the appellants'. The first page of this book, for example, which contains twenty-five names, does not have a single rating similar to Dun's; whereas, on the other hand, there are twelve names which do not appear in the Dun book at all. On page 2 there are thirty-six names, and but three of these have a rating similar to the Dun book, and of these three two differ from the Dun book in the business classification. Out of the thirty-six names appearing on page 2, sixteen do not appear in the Dun book at all. It would be very difficult to find a single page in the whole book where there are not many more names which are not contained in the Dun book at all than there are alleged similar ratings. It will also be observed that there are very few names which have similar ratings, compared with the entire number contained in the book, and in almost every instance where the ratings are similar there is a distinction in some other respect between appellants' book and appellee's book in regard to the name or business classification. When we consider the fact that if appellants' and appellees' books were each absolutely correct they would necessarily be similar in respect to all capital rat-

ings, so far as they relate to the lumber trade, and one would be necessarily an exact reproduction of the other, it is absolutely astounding to note the distinction and difference between appellants' book and appellees' book as shown by Exhibit 140. How any one, after an inspection of Exhibit 140, can honestly claim that appellees pirated from appellants' book is beyond our comprehension. Rather does this exhibit show that appellees, instead of endeavoring to do as little work as possible, made greater efforts and succeeded in producing a more complete book in every respect than appellants as relates to the lumber trade.

Exhibit 141 (Rec., 848, 932) is similar to Exhibit 140, except that it shows the difference between the July, 1901, edition of the Lumbermen's Credit Association book and the March, 1901, edition of the Dun book.

Several of these compilations and comparisons have been made by appellees from the books in question, which show how inaccurrate were the comparisons made by Mr. Stein and Mr. Gallagher.

Exhibit 142 (Rec., 948) shows very clearly the difference in the names and business classifications as to a portion of the names checked by Mr. Stein and Mr. Gallagher as being similar

Exhibit 146 (Rec., 959, 987, 990) shows a list of names checked by Mr. Stein and Mr. Gallagher as having similar ratings, but which are entirely different as to the capital ratings in the two books. It also contains names and ratings changed by appellants *with pen and ink to make them agree in order to count them as similar in computation.*

Exhibit 147 (Rec., 961) shows the difference in the names and classifications of business between

the September, 1901, Dun book and the January, 1902, Lumbermen's Credit Association book.

Exhibit 148 (Rec., 962) shows the difference in ratings at headquarters on reference ratings in the January, 1902, Lumbermen's Credit Association book and the September, 1901, Dun book, which were counted by Stein and Gallagher as similar. This exhibit contains between 1,800 and 2,000 names.

Exhibit 149 (Rec., 962, 975) shows the difference in ratings at headquarters on reference ratings, treated by Stein and Gallagher as similar, contained in the July, 1901, Lumbermen's Credit Association book, and the March, 1901, Dun book. This exhibit contains about 1,000 such names.

We have also prepared for the guidance of the court several charts, based upon the testimony of Mr. Kneffler and Mr. Tuttle, which eliminate from Mr. Stein's and Mr. Gallagher's computations the names which, for the reasons suggested above, are not given similar ratings.

If there was no other evidence introduced in this case, we believe that it would be clear to the court from a comparison of the two books that the Lumbermen's Credit Association book was in no sense a copy, either in whole or in part, of the Dun book, but was compiled from original information and that it was a much more accurate and complete publication than the general reference book of the Dun agency, so far as the lumber trade is concerned.

The Depositions.

Counsel for appellants have taken depositions in twelve cities and towns, located in eight different states, for the purpose of showing that similar mis-

takes, principally in the spelling of proper names, have occurred in the two reference books, claiming therefrom that the Lambermen's Credit Association did not have original information upon which to base its ratings in these particular instances. An inspection of these names, however, will show that these mistakes are mistakes which nine persons out of ten would be more likely to make than not. We comment at length upon these names, for the purpose of showing the original information which we have upon which to base each name and rating, and also for the purpose of showing how easy it has become for appellants to make a direct charge in using the bold headlines "Evidence of Actual Appropriation," without any foundation whatever upon which to base the same.

First: Loworn Bros, Tallapoosa, Georgia. This name first appears in the appellees' January, 1902, book as Loworn Bros., with a rating of Blank 2. The "2" indicates medium pay. Defendants' Exhibit 79, received from S. L. Craven, an attorney at Tallapoosa, Georgia, dated October, 1901, three months before the issuance of the January, 1902, edition, shows the following:

> "Loworn Bros. Near town. Saw mill. Medium pay. Temperate and attentive to business. Moderate ability and business habits. Small credit. These are nice young men of small means, but seem to be doing good busines and very reliable."

In both the Dun book and the L. C. A. the name *Lovvorn* is misspelled *Loworn*. It is very plain to every one that this is a mistake which is very apt to occur, because when two v's are written together they very closely resemble the letter w. Two witnesses of appellant were asked to state a single in-

stance in the English language where one v directly follows another in the same word, and they were unable to recall a single example. (Rec., 165, 166.) We do not believe that counsel for appellants can state such a case. At any rate, such an instance would be so rare that it is not strange that any one should mistake the two v's for a w.

Second: Lindsey & Swaim, Fairmount, Indiana. The name of this concern was spelled Lindsey & Swaim in the July, 1901, and January, 1902, editions of appellee's book. Prior to that time it had been spelled Lindsey & Swain. The names appeared in the same way in the Dun book. The mountain is again dwarfed into a molehill, when it is shown that appellee's correspondent at Fairmount, Indiana, was Charles T. Parker, an attorney at law, who was also the representative of Dun & Co. (Rec., 257.) Appellees have several reports from Charles T. Parker which furnish abundant foundation for the names as they were spelled and the ratings as they were given. On May 2, 1898, appellees received a letter, introduced in evidence as Defendants' Exhibit 73, from Charles T. Parker, in which the name of this firm is spelled exactly as it appeared in the L. C. A. July, 1901, and January, 1902, editions of its reference book, Lindsey & Swain. Defendants' Exhibit 75 is another report received from Charles T. Parker, containing the name Lindsey & Swaim, dated April, 1899. Defendants' Exhibit 76 is also a report received from Charles T. Parker, dated April, 1900, containing the name of Lindsey & S-w-a-i-n. (All of these reports contain complete information as to the capital, and all of them taken together justify the ratings given by appellee here.)

Appellants took the deposition of Julian L. Swaim. He was asked the question as to how W. H. Lindsey spelled his name, and he stated that some people spelled it Lindsay and some Lindsey, and that he did not know himself how Lindsey spelled it. (Rec., 258.) He stated that part of the mail that came to him was spelled Swain, and that he had received drafts and checks also in which the name was spelled Swain, and had paid drafts in which the name was spelled in that manner. (Rec., 259.)

The errors are errors that would be more apt to be made by any one than not. Even one of the partners of the firm did not know the correct spelling, and considering the fact that our correspondent was Dun & Co.'s representative, we think it would be strange if he did not make the same error in reporting to us that he made in reporting to Dun & Co.

Third: Waverly Bending Co., Waverly Ohio. There is a concern called Waverly Bent Wood Co., engaged in the manufacture of bent wood, at Waverly, Ohio. This name appeared in appellees' July, 1901, and January, 1902, book, with a reference rating ("See Hoffman and Breece)." Hoffman and Breece are rated at C (\$15,000 to \$25,000), prompt pay. J. Nott Hoffman and George E. Breece composed the Waverly Bent Wood Co. They were spoken of as the Waverly Bending Co. Counsel for appellees produced the original correspondent's blanks, made out by Washburn, McLaughlin & Moore, attorneys at Waverly, Ohio. Appellees' Exhibit 78, dated May, 1901, which contains the name of the Waverly Bending Co., and says: "Same as Hoffman & Breece." A report on the firm of Hoffman & Breece is on the same sheet, and contains the in-

formation that the total worth of the firm, including real estate, is $25,000. Appellees' Exhibit 77, dated May, 1900, shows that the firm of Hoffman & Breece is worth the sum of $20,000. These two original reports show conclusively that appellees did not copy this name or rating from apellants. With these original reports introduced in evidence in the case, we cannot understand how counsel for appellants could make the charge that appellees copied the Dun ratings. The rating of Dun & Co. ranged in its various editions from $10,000 to $35,000 and varied from F to E. The rating of the appellees, on the other hand, in every book was C-1 and this was based on the correspondent's reports just referred to. When appellees did not make the same changes as Dun & Co. and when they had their own correspondent's report to justify their rating, this evidence instead of showing piracy, indicates on the contrary original investigation and no connection whatever with the Dun ratings. Furthermore appellees did not rate the Waverly Bending Co. at all. It merely referred to Hoffman & Breece and the rating was given Hoffman & Breece.

Fourth: Marquardt Sash & Door Mfg. Co., Cleveland, Ohio. This name appeared in appellees' July, 1901, and January, 1902, books, rated as F-2, $2,000 to $3,000. Defendants' Exhibit 92, dated March, 1901, contains the name of Marquardt Sash & Door Mfg. Co., rated F-2. Defendant's Exhibit 98, dated May, 1900, received from George H. Burrows, attorney, Cleveland, Ohio, contains the name of Marquardt Sash & Door Mfg. Co., rated F-2. Defendants' Exhibit 107, received from Robert H. Jenks Lumber Co., dated May, 1900, contains the name of Marquardt Sash & Door Mfg. Co., rated

F-2. Defendants' Exhibit 113, received from Nicola & Stone, dated May, 1900, also contains Marquardt Sash & Door Mfg. Co., rated F-2. Defendants' Exhibit 86, dated April, 1901, received from Nicola & Stone Lumber Co., also contains the name of Marquardt Sash & Door Mfg. Co., rated F-2.

Philip H. Marquard testified on behalf of appellants that he thought he had made a personal report to the defendant Association of his financial condition. (Rec., 245.) He further said that his name was misspelled in many different ways. (Rec., 245.) It is a strange coincidence that although counsel for appellants were strictly on their guard, nevertheless in the notice which they sent out from their office the day before Marquard's deposition was taken they spelled the name M-a-r-q-u-a-r-d-t. (Rec., 245.) Counsel for appellants thus unwittingly committed the same grave error of which they accuse appellees of being guilty. The name Marquardt is more common than the name Marquard, there being thirty-seven of the former names in the Cleveland City Directory and twenty-eight of the latter. Frank B. Cattrell, chief clerk of Dun & Co. in Cleveland, when asked how it was that the mistake in this case escaped the observation of Dun & Co. from July, 1898, to July, 1902, said "it was simply a pure case of oversight, the mistake being entirely with one letter and not readily observed." (Rec., 249.)

Although Dun & Co. rated this firm at H ($3,000 to $5,000) appellees rated them at F ($2,000 to $3,000). If appellees were copying the Dun rating they would surely have changed their rating from H ($2,000 to $3,000) to E ($3,000 to $5,000) and thus conform to the change previously made by

Dun & Co. In the Dun book no business classification is given.

Fifth: L. F. Goree, Spigners Station, Alabama. This name appeared in appellees' January, 1902, book as at Spigners Station, rating BC, $10,000 to $15,000. Appellees' Exhibit 122, dated October 1, 1900, states that Goree is in business at Spigners Station and has been about ten years; that the value of the stock in the yard is $7,000. There is also another figure of $7,000 right underneath the first $7,000, which the rater, adding together, would make $14,000, and thus form a basis for the rating BC. Defendants' Exhibit 121, dated October, 1901, contains the name L. F. Goree, Spigners Station, Alabama, and states that L. F. Goree is a mill man and contains the further information: "Is here in business just as he has been for years." The name L. F. Goree, Spigners Station, with the notation, "Saw mill, etc.," appears in the Tradesman of January 1, 1902, issued before appellees' book, as shown by Defendants' Exhibit 145, p. 193. The spelling of Spigner's Station as it appears in appellees' book, appears also in the postal guide. This name was carried by Dun & Co. 5 years before it appeared in appellees' book. If appellees were copying all new names and ratings in the Dun book, as charged by Dun & Co., surely appellees would have published this name in one of the 9 books which were issued between January, 1897, and January, 1902.

Sixth: J. A. Browley, Gould City, Michigan, was rated by appellees at $3,000 to $5,000. Defendants' Exhibit 124, dated April, 1899, contains the name J. A. Browley, and states that his total worth is $5,000. Shortly after another report was received (Exhibit

125) which rated Browley at $7,000 to $12,000. Appellees continued to follow the conservative report and made the rating $3,000 to $5,000. The Dun rating was $5,000 to $10,000. If appellees raters placed any dependence upon the Dun ratings, surely this is a case where they would have raised their own rating to make it similar to Dun's. Appellants claim that the correct spelling of the name was Brawley. Mr. Browley's deposition was taken, and it was shown on cross-examination that he had recently changed the spelling of the family name. (Rec., 276.)

Seventh: Frank Ratthle & Co., Koepenick, Wisconsin. This name appeared in the both reference books as Frank Ratthle & Co., instead of Frank Rotthle & Co. This is a most likely mistake, and Defendants' Exhibit 135, dated April, 1901, contains the name of Frank Ratthle & Co., with considerable other information as to capital. This name first appeared in appellants' book September, 1900. It did not appear in appellee's book until July, 1901. If appellees were copying from appellants it would have appeared in appellees' January, 1901, book. It did not appear until after the report dated April, 1901. This conclusively shows reliance on nothing but original investigation. Dun & Co. rated this party at E. ($20,000 to $35,000). Appellants at B. C. ($10,000 to $15,000). Does this show copying?

Eighth: W. E. Brown, Pittsburg, Pennsylvania. This name first appears in appellees' January, 1902, book, no rating being given. Appellees' Exhibit 138 dated November, 1901, contains the name of W. E. Brown. The testimony of W. D. Brown was taken at Pittsburg, and he said he was engaged in the lumber business in Pittsburg. (Rec., 201.) It was shown that in the Pittsburg directory the name of W. E. Brown appeared immediately below that of

W. D. Brown, a lumber dealer, and consequently was a mistake that was very apt to occur. (Rec., 195.) Appellees produced a report received from Pittsburg, Pennsylvania, in which the initials of Brown's name are given as W. E. The correspondent stated that the particular line of lumber business in which W. E. Brown was engaged should be left blank, and this appellees have done, giving no capital rating or particular classification of the lumber business, but merely putting the name in the book as W. E. Brown, lumber. The blank rating means that no information is given in the book as to financial standing. It is absurd for counsel to contend that the adoption of a blank rating which says, "We give no information as to financial standing," can be a piracy of Dun & Co.'s blank rating even though the latter may convey information of the same negative character.

Furthermore, the name W. E. Brown appears in all of Dun & Co.'s books issued since March, 1898. It did not appear in appellees' book until January, 1902. If appellees were copying systematically from appellants surely it would not have taken four years to copy this name. It would have appeared in the July, 1898, edition of appellees' book. It did not appear, however, until after the report of November, 1901, was obtained by appellees.

Ninth: Phillips & Mittenzwey Sawmill & Lumber Co., Pittsburg, Pennsylvania. This name first appeared in appellees' January, 1902, book. Appellees' Exhibit 139, dated November, 1901, contains this name, with the rating, D-1, which means $5,000 to $10,000, and which was the rating appearing in its book. Appellants endeavored to show that this concern went out of business several years ago, and that it was error for it to appear in both books. Mr.

Radcliffe, the treasurer of the company, testified (Rec., 200-201) that it went into the hands of a receiver in the latter part of 1896. He said, however, that the charter had never been surrendered; that the creditors had not all been paid in full, and that the stockholders had never paid the full amount of their subscriptions. It is very plain, then, that this concern could not have gone out of business. Appellees' original report contains full information, however, upon which to base both name and rating contained in this book. Furthermore, this name was carried by Dun & Co. six years before it appeared in appellees' book. If appellees had for many years been engaged in the business of systematically copying from Dun & Co. surely this name would have appeared in appellees' book during the intervening six years. It did not in fact appear until after the report of November, 1901, was received from the correspondent.

Tenth: Heinbaugh & Shriner, Lake, Ohio. This name appeared in appellees' July, 1901, and January, 1902, books, with a rating of E F, $1,000 to $2,000. Appellees' Exhibit 136, dated April, 1900, contains the name Heinbaugh & Shriner, and states the value of the real estate owned by the firm over exemptions at $1,500. Appellees' Exhibit 137, dated March, 1901, received from the bank at Akron, Ohio, contains the name Heinbaugh & Shriner and states that Heinbaugh & Shriner "are worth probably $2,000, good, honest fellows." Each of the members of the firm, whose depositions were taken at Canton, Ohio, testified that their names were very frequently misspelled in this way. (Rec., 267, 270.) This name appeared in the Dun book two years before it appeared in appellees' book. If appellees had for many years been engaged in the business of system-

atically copying from Dun & Co., surely this name would have appeared in appellees' book much earlier. It did not appear until after the reports were received from the correspondents. Even though one report does spell the name correctly, still there were two that spelled it incorrectly. It was an error not easily detected under any circumstances and the rater was justified in following the majority of the reports. The business classification in the two books differ. In the Dun book it is "saw and planing mill;" in appellees' book, "mnfrs boxes."

Eleventh: Park & Stevens, Selma, Alabama. This name appears in appellees' book with a rating of C-1, $15,000 to $25,000, prompt pay. Appellees' Exhibit 82 is a report received from J. E. Wilkinson, an attorney at Selma, Alabama, dated November, 1901, containing the name of P-a-r-k and Stevens, rating C-1. The name Park & Stevens also appears in the Tradesman, dated January 1, 1902, and issued prior to appellees' book (Defendants' Exhibit 145, p. 193), instead of the name Parke & Stevens. It is clear that this is a mistake which would be very common. There was undoubtedly other information on which to base ratings in prior editions. Much of this information is contained in bank reports, reports from subscribers, special trade agencies, county seats, etc., and cannot be classified or readily found. It is entered in the office tickler and reproduced in the reference book. This name appeared in appellants' book three years before it appeared in appellees' book. If appellees had for many years been engaged in systematically copying from Dun & Co., surely this name would have appeared in appellees' book during the intervening three years. Furthermore, this name and rating appeared in appellees' books prior to the publication of the ones in question.

Counsel have misquoted their own key. Appellants have rated this firm at E-2, which means $20,000 to $35,000, and not $20,000 to $30,000. If appellees were following appellants' rating they would have used the rating B, meaning $25,000 to $35,000, and not C, meaning $15,000 to $25,000.

One of the witnesses for appellants, Mr. E. E. Gilman, was very emphatic as to how the name Parke & Stevens should be spelled. He said the proper way of spelling it was P-a-r-k-e & S-t-e-p-h-e-n-s. (Rec., 174.) He thus jumped from the frying pan into the fire, because although he fully carried out appellants' contention in regard to the spelling of the name Parke, yet he misspelled the name Stevens, and showed how easy it is to misspell a name, even when on one's guard.

It will thus be seen by the court that these names which are misspelled are very common errors. It is not strange that fifteen errors in spelling of this nature should occur among 60,000 names. These fifteen names were not selected at random, but were picked by complainants after careful investigation of appellees' entire book. For each of these names defendants had original information which has been produced.

Counsel for appellants call attention to two alleged fictitious names which appear in each of the two reference books—one that of Curtis & Payne, of Selma, Alabama, and the other Theodore Crawford, Huntsville, Alabama. The testimony of witnesses was taken at Huntsville, Alabama, and Selma, Alabama, to show that no such persons existed. The testimony of these witnesses, however, shows that they were not thoroughly acquainted with the entire locality, and there were some portions which these witnesses had not visited for a period of from ten

to fifteen years. One witness, E. E. Gilman, at Selma, Alabama, who cross-examined in regard to the grounds of his knowledge, back-watered completely and said (Rec., 176):

"I SHOULD LIKE TO BE EXCUSED FROM MAKING FURTHER ANSWERS TO THIS AND MAKE FURTHER INQUIRY. I SHOULD LIKE TO MAKE FURTHER INQUIRY OF THE ENTIRE MATTER WHICH I HAVE TESTIFIED CONCERNING THE FIRM OF CURTIS & PAYNE."

The sole witness at Huntsville was William L. Halsey, who is engaged in the wine and liquor business, and was the agent of the Anheuser-Busch Brewing Association. (Rec., 115.) Why appellants considered a saloonkeeper the best informed witness to testify in regard to who was engaged in the lumber trade, we do not know. On cross-examination, Mr. Halsey testified that he did know of some Crawfords that lived in the town, and that he did not know whether the right name of one of them was Theodore or not. (Rec., 116.) Appellees produced several blanks received from D. A. Grayson and others. Defendants' Exhibit 128 is a report dated October 10, 1901, received from David A. Grayson, Huntsville, Alabama, containing the name Theodore C. Crawford, S. D. & B. (meaning sash doors and blinds), A-1. Defendants' Exhibit 132, dated October, 1901, is a report containing the name Theodore C. Crawford, received from Huntsville, Alabama, AB-1, S. D. & B.

Here, then, are two reports which are not the same, one rating Crawford at from $50,000 to $75,000, and the other at from $35,000 to $50,000. Complainants cannot claim that each of these reports is copied, either directly or indirectly, from the Dun book, as they differ.

Defendants' Exhibit 82, received from J. E. Wilkinson, attorney, Selma, Alabama, dated November, 1901, contains the name Curtis & Payne, rated D-1. The good faith of appellees is shown by the fact that two statements were sent to Selma, Alabama, one to the law firm of Mallory & Mallory, Exhibits 80 and 81, dated October 10, 1901, which was returned with the notation that "We know nearly all the parties inquired about, but not sufficiently accurate to make the report." Then another statement was sent to J. E. Wilkinson, who returned the same with the name Curtis & Payne, and rating D-1. The name Curtis & Payne, which is claimed to be fictitious, also appears in the Tradesman, dated January 1, 1902, and issued before appellees' book, with the notation "planing mill." This publication was in the possession of appellees before their book was issued, as they revise their book right up to the time of publication, the last of January.

Whether these names are fictitious or not we do not know. We do know, however, that we sent out inquiries and received reports in reference to these names.

If these names are fictitious the failure to ascertain this fact was due to the correspondent.

The easy-going southerner is frequently more accommodating than accurate, and it may have been that our correspondents at those places acquired their information from people who had indirectly acquired theirs through the general impression created by the Dun book. It may have been that our correspondent at those places was the same as the Dun representative, as was the case at Fairmont, Indiana, where Charles T. Parker acted for both parties. Our correspondents are frequently attorneys or justices of the peace or postmasters, and

very often these same parties act as correspondents for Dun & Co., and, if such were the case, it would be most natural for the correspondent to refer to the information which he himself had checked up for Dun & Co., and send us the same information.

Dun & Co. revise their books by sending out blanks on which they put the names appearing in their last edition and undoubtedly had sent to their correspondents at Selma and Huntsville these printed names for corrections and changes for the September and January books. These had been twice looked over by their correspondent and returned. In small towns like Huntsville and Selma, having a population of about 8,000, these correspondents for the different mercantile agencies are usually well acquainted, and confer with each other with reference to checking up their lists of names and reports. If our correspondent were not the Dun correspondent, he would be very likely to confer with the Dun correspondent; or he might have had access to the Dun book and have referred to the same. At any rate, the general effect of any report made by R. G. Dun & Co. would be far-reaching. It enlarges in geometrical proportions, and it would be impossible for an agency of the importance of Dun & Co. to make a general statement of any kind without creating a definite impression in the minds of the people in the business world. A man's reputation in business in the community is governed and determined very largely by the mercantile agencies, and each agency, as the court can plainly see, must necessarily have a very great indirect influence upon the other. It may be true that if a correspondent were omniscient, and exercised the utmost degree of skill known to man, then in every instance his in-

formation would be strictly accurate. However, it must be borne in mind by the court that neither Dun & Co. nor the defendant association are able to have salaried employes in every city and town in the United States. The arrangement which these agencies have with local correspondents, who are usually attorneys or justices of the peace, is that the correspondent shall furnish all information gratis, and in return shall have his name published in the reference book and shall receive all collections against parties in his particular place. Each agency has a correspondent in every town in the United States. The only compensation which the correspondents receive, except in some of the larger cities, is what has been stated above. This is the only practicable method of conducting a mercantile agency. It is the method pursued by Dun & Co., and it is the method pursued by the Lumbermen's Credit Association. It would not be strange that among over 5,000 correspondents one or two might be slightly careless. That is inevitable, and happens to Dun & Co. as well as to the Lumbermen's Credit Association.

The thoroughness of appellees in securing information is shown by the fact that these names were taken out of the July, 1902, book before the depositions of appellants were taken in respect to these names or before appellees had any knowledge that appellants claimed them to be fictitious.

It is a significant fact that appellants cited only two instances of alleged fictitious names. It may be safely asserted that if appellants were attempting to trap appellees, they would not have inserted merely two names. Any one with such an object in view would probably place in a book the size of the Dun book five hundred fictitious names and cer-

tainly at least one hundred fictitious names scattered amongst the towns in the various parts of the United States. Appellants certainly did this in this case.

Attorneys for appellants made strenuous efforts to secure a preliminary restraining order and also a preliminary injunction in this case. Many affidavits were secured at great cost and labor, but nowhere was mention made of these two alleged fictitious names. Had appellants known about them at the time they certainly would have brought them forth when they were endeavoring to prevent the issuance of appellees' book. The only reason they did not was because they knew nothing about them. Now, if there were only two names inserted in the entire book of Dun & Co. for a trap, the very first thing appellants would have done would have been to have turned to appellants' book to see whether these two names had been copied. It was much simpler than securing Wright's affidavit, and the affidavits of the other witnesses, and resorting to the means which they did in order to secure the copy of the 1902 edition of defendant Association's book. This copy they had before them. The only reason, therefore, they did not notice the two alleged fictitious names was that so many were inserted in the Dun book which did not appear in appellees' book that appellants believed that none of them appeared in appellees' book, and it was only when the matter was thoroughly checked over that it was discovered that two names out of the vast number inserted as a trap appeared in the defendant Association's book. Appellees, however, in their vigilance discovered the inaccuracy even as to these names, and took the names out of the July, 1902, book before anything appeared in the record or in any way to appraise

them that these two names were claimed to be fictitious. Thus, instead of proving appellees guilty of piracy, the two alleged fictitious names, when considered with reference to all the circumstances, show the thoroughness of appellees' system, even with reference to names which have been inserted as a trap by other agencies.

The Seventy-three Names.

Counsel for appellants called attention to only eighteen names and ratings among the seventy-three names concerning which appellees produced original information, and which appellants claimed are not based upon such information. Among this entire list there is not one name which has the same rating as appears in the Dun book. An inspection of the reports produced in evidence will show ample foundation and justification for the rating given by appellees. We ask a thorough examination of these reports, and hereafter call the attention of the court to specific reports upon which our names and ratings are based.

It should be carefully borne in mind that while appellees endeavor to preserve their information, still much of it cannot be classified so as to be readily produced. For instance, reports are frequently sent in by county seat correspondents, subscribers, traveling men and by lumber association secretaries, containing information in regard to various towns. It would be impracticable to file this information under the head of any one town, and hence when appellants called for information in regard to a particular town it was impossible to locate all the information of the character described. Much of this information would be transferred to the office tickler and then put away. However, the reports that have

been found must thoroughly convince this court (as they did the Court of Appeals and Circuit Court) that we went to the original sources for information and secured the same, and did not base our ratings upon those contained in the Dun book.

First: St. Johns C. M. & M. I., St. Johns, Arizona. This firm appears in appellees' July, 1901, and January, 1902, editions, rated D-1. However, in appellees' book the name does not appear in the same way as in the Dun book. The Dun book spells the name St. Johns Co-operative Merct. & Mnfg. Institution. The L. C. A. spells the name St. Johns C. M. & M. I. Appellants' Exhibit 33 is a postal card received by appellees February 19, 1900, containing the name of the firm and the words "dealers in sash, doors, etc." The rating given was D ($5,000 to $10,000). This was entirely different from the rating given by complainants, which was D ($35,000 to $50,000). The conclusion drawn by appellants that appellees must have copied the letter D without translating it is shown to be erroneous by the fact that there are many instances among the seventy-three names where the ratings in the two books have the same letter but indicate vastly different amounts and the L. C. A. has personal statements to show that its rating is correct and the Dun rating is not.

The instances which will be hereafter referred to more particularly are (1) the Atlanta Basket & Veneer Co., rated by Dun at C ($75,000-$125,000) and the L. C. A. at C ($15,000-$25,000) (2) Shaw Lumber Co., rated by Dun at C+ ($125,000 to $200,000) and by the L. C. A. at C ($15,000 to $25,000); (3) Mackemer & Carlin, rated by Dun at E ($20,000-$35,000), and in the L. C. A. book at E ($3,000-$5,000); (4) W. E. Lyons & Co., rated by Dun at D

($35,000 to $50,000), and in the L. C. A. book at D ($5,000 to $10,000).

The personal statements are all signed by the parties. In every instance the rating given by the appellees is many thousand dollars less than appellants. The parties would certainly claim the maximum capital worth in their statements and these show that Dun's ratings are erroneous.

The name of this firm is St. Johns C. M. & M. L., St. Johns, Arizona, is spelled in exactly the same way in the appellees' book as on this postal card. Among all the reports, numbering more than 400, which have been introduced in evidence this card, which calls for considerable information, is about the only one which does not ask for a rating. This fact makes it plain that appellees already had a rating in their office tickler derived from original sources, and merely wished, in this particular instance, information in regard to a particular line of business. It would have been a simple matter for appellees to have asked for a rating, as in each of the other 400 instances. The fact that they did not do so shows that they already had a rating, which appears in their book entirely different from that in the Dun book.

The classification of the business of this concern is entirely different in the two books. In the Dun book it is "G. S. and Mfg. Flour, etc." In the L. C. A. book it is "s. d. b., etc.," meaning sash, doors, blinds, etc. How could the appellees have obtained this name from the Dun book, or how could it have it appeared in the red bound book as a new name when there is nothing in the Dun book to show that this concern is in the lumber business or in any way connected with it?

Second: McCoy & Trotter, Monticello, Arkansas. This name appeared in appellees' July, 1901, book, rated $15,000 to $25,000, and in January, 1902, book, rated $75,000 to $100,000. Appellants' Exhibit 34 is a report received from Matthews & Cotham, attorneys, Monticello, Arkansas, by appellee, and dated October, 1899, containing the name of McCoy & Trotter, and showing the total worth of the firm as $20,000. Appellants' Exhibit 36 is a report from Matthews & Cotham, attorneys, dated October, 1901, containing the name of McCoy & Trotter, showing their total worth to be $60,000. Here, then, we find a blank which showed an increase in capital of $40,000, and justified an abnormal change of rating. The only error, if it might be called such, is the slight mistake of our rater, or of the printer, in rating the concern two A's instead of one; one A meaning from $50,000 to $75,000, and two A's from $75,000 to $100,000, a mistake that might easily occur. The business classification in the two books is different. In the Dun book it is "g. s. wagons, etc."; in the L. C. A. book it is "s. d. b. and g. s." This name could not possibly have been secured from the Dun book, as its classification is foreign to the lumber trade.

Third: Amos Hawley, Hawleyville, Connecticut. This name appeared in appellees' July, 1901, edition, rated at H, $100 to $500. Appellants' Exhibit 98 is a report received by appellees from Hawleyville, dated October, 1898, showing that Hawley was in business and was medium pay and worthy of credit. In Appellants' Exhibit 99, received October, 1899, Amos L. Hawley appears without any rating, but with the statement that he is worthy of credit. Appellants' Exhibit 101, received by appellees from Hawleyville, November, 1901, contains the name of

Amos L. Hawley, rated at H-2. The most natural rating to give a man in regard to whom little information can be obtained was $100 to $500. It is safe to presume that any man in business and worthy of credit has at least that much capital. This rating was not the same as the rating in the Dun book, which was $3,000 to $5,000. Counsel for appellants ask why a blank rating was not made as in the case of Lovvorn Bros. The answer is that a different rater did the work. Each rater exercises his own judgment. Here also the business classification differs from that in the Dun book. In Dun's it is "Saw and Grist Mills"; in the L. C. A. it is "s. m. h. w. l.," meaning saw mill and hardwood lumber. How could appellees get hardwood lumber from the Dun book?

Fourth: J. H. McArthur, Long Pond, Montgomery County, Georgia. This name appeared in appellees' July, 1901, book, rated at G, meaning $500 to $1,000. Appellants' Exhibit 124, received by appellee from G. J. Stanford, Long Pond, Montgomery County, Georgia, shows that the total worth of J. H. McArthur, including real estate, is $1,800. Appellees were merely acting in accordance with conservative judgment and taking into account the exemption laws when they rated at from $500 to $1,000, and which was not the rating given by appellants. In the January, 1902, edition, appellees changed their rating of McArthur from G —$500 to $1,000—to D—$5,000 to $10,000—which was justified by appellants' Exhibit 125, received by appellees, dated October, 1901, which states that each of the several persons mentioned in the report are worth from about $3,000 to $30,000. This party is at Long Pond, Montgomery County, Georgia, and not Montgomery, Alabama, as stated by counsel for appellants.

Fifth: South Bend Wagon Company, South Bend, Indiana. It is not claimed that appellees did not have information upon which to base the rating given in July, 1901, and January, 1902, books, which are the only books in question in this suit, and so we will just call attention briefly to appellants' Exhibit 169, dated May, 1900; appellants' Exhibit 170, dated May, 1900; appellants' Exhibit 171, being a statement received October 25, 1901, each of which contains names and amounts justifying ratings given in appellees' book. The complainants only allege a copyright of the March, July and September, 1901, editions of their book. (Rec., 5-6-10-11.)

Sixth: Morris & Lowe, Cordova, Maryland. These parties are rated by appellees in July, 1901, and January, 1902, books at F, meaning $2,000 to $3,000. Appellees' Exhibit 189, dated October, 1900, and received by appellees from J. B. Ross, Cordova, Maryland, contains the name of Morris & Lowe, and states that the total worth of the firm, including real estate, is $5,000. Appellees, exercising their conservative judgment, and taking into account the exemption laws, rated them at from $2,000 to $3,000, based upon the information received from the correspondent. This was not the same as appellants' rating, which was $10,000 to $20,000.

Seventh: F. A. Whitney Carriage Company, Leominster, Massachusetts. This company was rated by appellees in their July, 1901, edition at C, $15,000 to $25,000. Appellants' Exhibit 202 is a statement received by appellees from H. C. Bascomb, attorney, dated October 1, 1900, stating that F. A. Whitney has an interest in the Whitney Carriage Company, and is good for any amount desired. Hence the rating C was properly given. Appellants' Exhibit 205 is a personal statement, dated July 23,

1901, received from F. A. Whitney Carriage Company by appellees. This rating is not the same as that given in the Dun book, which was $75,000 to $125,000.

Eighth: J. M. Cogo & Co., Port Jervis, New York. It is not claimed that appellees did not have information upon which to base the names and ratings contained in the July, 1901, and January, 1902, books, being the only ones in question in this suit. Appellants' Exhibits 276, 277 and 278, being reports received by appellees prior to issuance of appellees' books, show ample information.

Ninth: Charles Crouse, Littleston, Pennsylvania. An F-2 rating on this name appeared in the January, 1902, edition of appellees' book. Appellants' Exhibits 293, 294 and 295 are three cards received by appellees respectively December, 1899, November, 1900, and December, 1901, containing the name Charles Crouse, and showing the line of business in which he is engaged. At no time prior to or in the January, 1902, book was the rating given by defendants the same as the rating given in appellants' book. This name and rating had been carried in appellees' book many years. Appellees followed the previous editions of their own book and did not take appellants' rating. If appellees were blindly following appellants they would not have carried a totally different rating on this name for five years.

Tenth: Creola Lumber Company, Creola, Alabama. This concern is rated by appellees in the July, 1901, edition at D, meaning $5,000 to $10,000, and in the January, 1902, edition at AB, $35,000 to $50,000. Appellants' Exhibit 11, dated January 29, 1901, is a financial statement received by appellees from Creola Lumber Company. It shows that the company is incorporated for $50,000; that it has

paid $20,000 on lumber lands, and will use the balance of stock in building mill and railroad; that it has not yet commenced doing business. The rating D was the exercise of a conservative judgment in rating a new business not yet established. The value placed by a concern on its own real estate is nearly always largely discounted, especially in remote districts, where values are uncertain. This rating was not the same as Dun's, which was from $35,000 to $50,000. In October, 1901, when the concern was fully established, a report was received from H. P. Lewis, Creola, Ala., stating that the Creola Lumber Company had $50,000 invested in the business, and that the value of the stock in the yard was $35,500; that it had been in business ten months. This justified the rating given in the January, 1902, book of $35,000 to $50,000. No business classification is given in the Dun book. In the L. C. A. book the classification is "Mnfrs Lumber."

Eleventh: Waterbury Lumber & Coal Company, Waterbury, Conn. This concern is rated in appellees' July, 1901, book at C, meaning $15,000 to $25,000, and in the January, 1902, edition at from $75,000 to $100,000. Appellants' Exhibit 113 is a financial statement received February 27, 1897, from Waterbury Lumber & Coal Company, showing their authorized capital as $25,000, and that $25,000 had been paid in. This was what the rater of the July, 1901, book went by. In revising the work for the January, 1902, edition, the rater noticed that in addition to the paid in capital there was a surplus, according to the statement, of $100,000, and hence changed the rating to $75,000 to $100,000, which was justified by the statement. The reason for this was a change in the custom of appellees whereby instead of rating corporations according to their author-

ized capital stock, it rated according to capital stock and surplus. (Rec., 816.) No business classification is given in the Dun book, while in the L. C. A. the concern's business is designated as "Lumber & bldrs."

Twelfth: Champlain Mfg. Co., Burlington, Vermont. Appellants merely refer to appellees' books issued prior to July, 1901, and January, 1902, editions, and hence not in question in this suit. We call attention to Appellees' Exhibits 295, 296, 298, 299, 288, 289, 290, 291, 292, 293, 294 and 300, amply justifying the information given in appellees' books. The business classifications in the two books differ. In the Dun book it is "Mnfrs. Chairs, Doors, etc."; in the L. C. A. book it is, "p. m. int. finish," meaning planing mill, interior finish.

Thirteenth: J. P. Asheraft, Hundred, W. Va. Here, again, appellants merely refer to editions prior to July, 1901, and January, 1902, of appellees' book, which are the only books in controversy. We call attention to Appellees' Exhibit 302, being a report dated October, 1899, and revision blanks dated 1900, being Appellees' Exhibit 301, which show name and rating as they appeared in appellees' books.

Fourteenth: A. H. Ordway & Co., South Framington, Mass. This concern was rated by appellees in the July, 1901, book at C, meaning $15,000 to $25,000. Appellees' Exhibit 240 is a report received from S. A. Phillips, attorney, South Framington, dated October 1, 1900, and prior to the editions in question, giving the estimated capital at $25,000.

Fifteenth: Howard Gaylord & Co., South Hadley, Mass. Here again appellants merely call attention to books prior to July, 1901, and January, 1902, edi-

tions, which are the only books in controversy. We call attention to Appellees' Exhibit 245, dated January, 1898, being a personal statement, and also Appellees' Exhibits 246, 247 and 248, dated October 10, 1898, 244 dated October, 1899, 253, 252, 249 and 250, all received prior to the July, 1901, edition; and Appellees' Exhibit 243, received prior to the January, 1902, edition, and which show ample justification for the ratings given by appellees. Here again the classification of business differs. In the Dun book it is "sashes and blinds;" in the L. C. A. book it is "mfrs. s. d. & b.," meaning *manufacturers* of sash, *doors* and blinds.

Sixteenth: Hatch & Barnes, Worcester, Mass., rated in defendants' July, 1901, edition at from $3,000 to $5,000, in the January, 1902, edition at from $25,000 to $35,000. Complainants' Exhibit 234 is a report card of defendants, dated May 1, 1896, showing the capital of the firm is from $3,000 to $5,000. Complainants' Exhibit 231 is a revision report, dated October, 1898, received by defendants, showing the rating of Hatch & Barnes as E, meaning $3,000 to $5,000. Complainants' Exhibit 227 is a revision blank received October 1, 1900, showing the rating of Hatch & Barnes at E-2. On January 17, 1902, defendants received a correspondent's statement from Elmer C. Patton, attorney, in reference to Hatch & Barnes, in which he states that the value of the lumber stock is from $10,000 to $12,000, and the value of the machinery $8,000. This report was received prior to the issuance of the January, 1902, edition, and furnished justification for a radical increase in the previous rating of from $3,000 to $5,000. Complainants' Exhibit 235 is a report card of defendants, dated October 2, 1901, which states that "They (meaning Hatch & Barnes) have

some moneys outside of the business, and their responsibility as a basis for credit is now commonly placed at $25,000." This report justifies the rating of from $25,000 to $35,000. This concern had been making advance according to the reports. It was reasonable to presume that they would continue to do so, and hence the rater gave them a rating of from $25,000 to $35,000 rather than from $15,000 to $25,000.

Seventeenth: William L. Bullock, Mt. Holly, N. J. Many of the statements made by the appellants refer to previous editions of appellees' books not now in question. In the July, 1901, edition, appellees rated Bullock at G, meaning from $500 to $1,000. Appellees' Exhibit 271 is a report dated October, 1899, from Charles E. Merritt, attorney, showing William L. Bullock has real estate to the amount of $2,000, estimated capital in business $1,000, and total worth, including real estate, $3,000. The rater probably merely considered the amount of capital which Bullock had in business, which was $1,000, and hence gave him a rating of from $500 to $1,000, while the raters of the previous editions probably took into consideration his real estate holdings and gave him a higher rating. In no case is the rating the same as the Dun rating. Here again the business classification differs from Dun's. In the L. C. A. book it is saw planing mill manufacturer, sash, door and blinds. In the Dun book it is carpenter and sash factory.

Eighteenth: Hopkins & Williams Co., Newton, N. J. The reason this concern was rated at much less than the amount of its cash assets, is because its capital stock was $10,000, and it was the custom of the L. C. A. at this time to rate on capital stock and not on capital stock and surplus. (Rec., 816.)

The report of May 1, 1900 (Exhibit 271), showed that this was an incorporated company. The company's capital was about $50,000. The previous raters either overlooked the fact or did not have in hand the information that this was a corporation, and hence fixed the rating according to a different method. The business classification here also differs from the Dun book. In the latter it is "Coal & Feed"; in the former it is "lum. & mfgrs. s. d. & b." A concern whose classification was coal and feed in the Dun book would not and could not appear in the red bound book as a new name.

An inspection of the foregoing reports will show that nine out of ten are from lawyers of the highest standing in the places of their residence, and the remaining reports are from banks, postmasters, lumber dealers and other authorities of the greatest reliability possible. These reports show, and are evidence of thorough and original investigation. Each one shows clearly a reason for the name and rating given, and absolutely controverts the charges of appellants, which are surmises of the most imaginative sort.

Appellant called upon appellees to produce original information as to seventy-three names. Over 300 reports of the greatest inherent authenticity were produced. They all show a thorough and complete investigation. Counsel for appellants could not even indulge their imagination as to the greater part of these seventy-three names, and hence have nothing to say with regard to the original information which was produced by appellees in reference to them. Appellees have prepared a schedule showing many vital differences in names, classification of business and ratings in the information shown in the L. C. A. book as printed, from that given in the Dun

book, with reference to these seventy-three names. This schedule appears under the uncontroverted facts in this brief.

It should also be borne in mind by the court that these seventy-three names were picked by experts from twenty-two states, covering appellees' entire book. Appellants having failed to show that the appellees were unable to produce original information in regard to these names, it is preposterous to claim that the reference book of the Lumbermen's Credit Association, as a whole, or a great part thereof, has been copied from the book of Dun & Co. That these experts did their work as well as possible, and picked out the names which bore the greatest appearance of having been copied, there can be no question. Nor is there any doubt but that they exhausted all the names which have even an outward appearance of having been copied.

This is clearly shown by an inspection of appellees' Exhibits 140 and 141, and the other comparisions that have been made. In view of what these exhibits show, it is absurd for appellants to claim that appellees' book was, in any part, pirated from that of the appellants.

Appellants also state that no attempt was made by appellees to prove any act or single instance of piracy on the part of appellants from appellees' book; that therefore this charge was not made in good faith. In reply to this it needs only to be said that appellants failed to make out a case of piracy against appellees and hence it was not necessary to prove the counter charge, which the court can readily see would be a matter involving enormous expense.

It may be said, however, that if the evidence, as appellants contend, shows piracy on the part of

appellees, there is plenty of this kind of evidence to show that appellants pirated from appellees: For example, the Mobile Basket Company first appeared in the Lumbermen's Credit Association January, 1901, book and was first inserted in the Dun September, 1901, book, and contained a similar rating to that used by appellees.

Allen & O'Shee, Alexandria, La., appeared in appellees' January, 1901, book. It first appeared in the July, 1901, Dun book.

The following changes were made in the Dun book, causing their ratings to coincide with appellees' previously published ratings:

George Pritchett, Pettigrew, Ark., from K4 ($1,000 to $2,000) July, 1901, to H4 ($3,000 to $5,000) September, 1901, to coincide with appellees' E ($3,000 to $5,000) July, 1901.

Gates Carriage Co., Bridgeport, Conn., from K4 ($1,000 to $2,000) March, 1901, to J3 ($2,000 to $3,000) July, 1901, to coincide with appellees' F ($2,000 to $3,000) January, 1901.

H. C. Wooster Co., Essex, Conn., from G3 ($5,000 to $10,000) September, 1900, to F2½ ($10,000 to $20,000) January, 1901, to coincide with appellees' BC ($10,000 to $15,000), July, 1900.

E. E. Foy Mfg. Co., Egypt, Ga., from —— (indefinite), March, 1901, to C2 ($75,000 to $125,000), July, 1901, to coincide with appellees' AA ($75,000 to $100,000), January, 1901.

C. B. Ragsdale, Holly Springs, Ga., from M4 (under $500), July, 1901, to L4 (under $1,000), September, 1901, to coincide with appellees' G ($500 to $1,000), July, 1901.

Maurice Feitel, New Orleans, La., from J3½ ($2,-

000 to $3,000), July, 1901, to H3½ ($3,000 to $5,000), September, 1901, to coincide with appellees' E ($3,000 to $5,000), July, 1901.

These are merely examples of hundreds of illustrations that might be cited. Among the seventy-three names attached to the Prudence affidavit, in reference to which appellants called upon appellees for original information before Master Bishop, were the following:

Atlanta Basket & Veneer Co.

Shaw Lumber Co.

W. E. Lyons & Co.

Mackemer & Carlin, and

A. R. N. Wilkes.

In each of these instances, appellants and appellees used the same letter to indicate a capital rating, but the letter in the case of the two agencies indicated vastly different amounts.

The Atlanta Basket & Veneer Co., Atlanta, Georgia, is rated by R. G. Dun & Co. at "C," $75,000 to $125,000. It is rated by the Lumbermen's Credit Association at "C," $15,000 to $25,000. Appellees produced Exhibits 119 to 122, one of which is a personal statement over the signature of the Atlanta Basket & Veneer Co., which states that its assets are $25,000. It is a well known fact that a party asking for credit places its rating as high as possible. If this concern were worth more than $25,000 it certainly would have said so in its personal statement. What authority, then, did Dun & Co. have for its rating of $75,000 to $125,000?

Again, the Shaw Lumber Company, Boise, Idaho, is rated in the Dun book at "C+," $125,000 to $200,000. It is rated in the Lumbermen's Credit Associa-

tion book at "C," $15,000 to $25,000. Appellees produced as original information Exhibits 132 to 139, one of which is a personal statement, containing full and complete information, in which the Shaw Lumber Company merely claimed to be worth $23,000. Where did R. G. Dun & Co. get authority for its rating "C+," $125,000 to $200,000?

W. E. Lyons & Co., Carthage, Ill., are rated in the Dun book at "D," $35,000 to $50,000, and in the L. C. A. book at "D," $5,000 to $10,000. Appellees produced eleven exhibits numbered 140 to 150, one of which is a personal statement in which W. E. Lyons & Co. merely claim that their total assets amount to $10,794.68. Where did Dun & Co. get their authority for their rating of D, $35,000 to $50,000?

Mackemer & Carlin, of Tremont, Illinois, are rated in the Dun book at "E," $25,000 to $35,000, and in the Lumbermen's Credit Association book at "E," $3,000 to $5,000. Appellees produced Exhibits 154 to 157, one of which is a personal statement in which Mackemer & Carlin only claim to be worth $5,000. Where did Dun & Co. get their authority for the rating of "E," $25,000 to $35,000?

It must be borne in mind by the court that these instances are not selected by appellees. They are a portion of the seventy-three names which appellants claimed were pirated from them. They are a part of the seventy-three names in question in this suit, and selected by *appellants* as a test, on the reference for a preliminary injunction. There are many other instances where there are full, complete and detailed reports from correspondents which show that the rating in the Dun book is entirely incorrect. This is true of nearly all of the seventy-three names. We merely call attention to the four

names cited above, because in those cases we have the personal statements of the parties themselves, which cannot be incorrect, and which certainly would claim the maximum of capital worth. An inspection of these reports alone would certainly convince any court that the system of the Lumbermen's Credit Association was much more thorough and accurate than that of Dun & Co. This is shown by the exhibits which they themselves called forth. We ask a most careful examination of the 315 exhibits which were put in evidence in reference to these seventy-three names, as well as of the exhibits which were put in evidence in reference to the names, concerning which depositions were taken. They do not disclose mere verification slips, but show a complete, adequate, accurate and comprehensive method of obtaining information as to capital and pay.

III.

THE REFERENCE BOOK OF THE LUMBERMEN'S CREDIT ASSOCIATION DIFFERS VERY MATERIALLY FROM THE DUN BOOK, AND ANSWERS AN ENTIRELY DIFFERENT PURPOSE IN THE LUMBER AND KINDRED TRADES.

Appellees' book is devoted to one line of trade, while the Dun book is general and covers all lines. In addition to what the Dun book covers, the L. C. A. book has a railroad guide, an express company's guide, a bank directory, and an attorneys' list. It has a marginal space and ruled lines for the use of subscribers in compiling freight rates. It also has a blank margin on the right hand side of the names for any additional data which subscribers may desire to place against the name, for information in the shape of changes of firms or any data of the change of financial standing of firms, and for all in-

formation in the way of delinquent matters pertaining to the credit of parties, whose names appear in the book. For the sake of convenience and quick finding of a state, defendants' book has a marginal index. It also has a list of justices of the peace in the towns where there are no attorneys. This information is all compiled under the heading of the town and county and of the railroads and population which appear above the names. In other words, all the information pertaining to a town is included under the town. These different items of information are not given in complainants' book as arranged in defendants'. They are entirely different. Business classification in defendants' book is more fully defined, especially as to the character of lumber manufactured, whether manufacturers or wholesale dealers, or whether they are country yard people, or people who are wholesalers and do not carry a stock of lumber. This feature of knowing the fact that they do not carry a stock of lumber is very important in the matter of extending credit. It indicates that the party has no tangible assets. In connection with the country yard lists, that is, dealers who have a line of yards, the defendant makes a special point to indicate where the purchasing department is located (while the Dun book simply makes a reference to headquarters), indicating that if the subscribers desire to sell to yard line concerns they must go to the purchasing office to make their sales. It saves them the expense of soliciting business from these different yards who are not buying direct. This information is not given in complainants' book. In defendants' book all retail dealers are simply indicated by the word "lumber," the saw mills are indicated by the letters S. M., manufacturer—showing the kind of lumber manufactured and whether they

are hardwood manufacturers or yellow pine. Defendant also has a number of other classifications covering the wood working lines, such as manufacturers of furniture, harvesters, pianos. The Dun book has a capital and credit rating. The L. C. A. book shows the capital and *pay* rating, "prompt pay," "medium pay," "slow pay," "very slow pay," indicating the manner in which a man meets his maturing obligations. This pay rating has no reference whatever to the credit rating. It has no connection with the capital rating. It is entirely independent of it. It signifies how a man pays his bills. Defendants' book has 113 different characters, all indicating different delinquencies, incumbrances and conditions affecting the credit or financial standing of the party, and many other items of information. None of these items of information are contained in complainants' book. From these differences which have been pointed out, it will be seen by the most casual observer that instead of being a servile imitation of the Dun book it is different from it in nearly all respects, and is regarded by the lumber trade as an authority far superior to the Dun book.

Many of the principal dealers in lumber and kindred lines of Chicago testified as to the difference between the defendants' and complainants' book. They were all men of the highest standing in lumber and business circles, and they were all of the unqualified opinion that the defendants' book was far superior to complainants'.

W. Scott Keith stated that he was connected with the Keith Lumber Company and had been in that business twenty-five years or more.

"We have been subscribers to Dun & Co.," he said, "about ten years and of the L. C. A. book

twenty years or more, and are also subscribers of Bradstreet. (Rec., 885.)

We consider that the book of the L. C. A. serves a different purpose in the lumber business than the Dun or Bradstreet book. We use the L. C. A. book for the purpose of establishing credit in the lumber business, and to know the standing of people in the lumber trade and for their credit, for the purpose of selling them goods. (Rec., 885.) We use the freight rate columns very little; we use the blank space for making notations very little; we often use it as a guide in mailing, we look upon it as acceptable to the lumber trade, almost a specialist, as you would say. (Rec., 886.) We can gather quickly the information we want in our trade, because it is a lumber trade commercial agency. The rating is different from the Dun and Bradstreet books; it is original; there are numbers there to those ratings that we are more familiar with as we use it more.

It is simply a lumber book; we go to it more; we are more familiar with it and rather rely upon it more. Bradstreet's book was not quite as comprehensive; it might be that a man was engaged in lumber and something else; that we would know from the Lumberman's book and we would not know it from the Bradstreet and Dun. I mean because of the difference in classification. We think the classification in the L. C. A. book is of value over that given in the Dun or Bradstreet, simply as confined to lumber, more in detail. I am familiar with the value of the L. C. A. books; we look upon it as being original, and very trustworthy (Rec., 887); and their reports in detail we look upon as being conservative and better than either of the other books, and always have. Our experience is that THE L. C. A. HAS A REPRESENTATIVE IN OUR OFFICE VERY FREQUENTLY,

THREE OR FOUR TIMES A MONTH; DUN PROBABLY THREE OR FOUR TIMES A YEAR; BRADSTREET NOT AT ALL, for information for the purpose of credit, for those we deal with." (Rec., 888.)

E. L. Roberts testified that he had been engaged in the sash, door and blind business under the name of E. L. Roberts & Co. for thirty-six years; that he had been a subscriber to the defendants' book for twenty years and of Dun's book for sixteen years, and said (Rec., 865):

"The L. C. A. book serves a purpose and fills a need in our business other than that of the book of Dun & Co. We take our mailing lists from that book, our attorneys lists, we get hardware trade who handle sash, doors and blinds, we get the names of a great many of the large buyers connected with line yards, or yards owned by the large companies; series of yards; it keeps in close touch with the changes; the revision in that special line of trade we want to cover. That is, those using and buying sash, door and blinds. Dun & Co.'s book does not contain that information so fully as this book. The difference in the classification is that the L. C. A. book makes a specialty of that line, more than the Dun does. The L. C. A. gives the names of the buyers for those line yards (Rec., 866); I mean the name of the town where the purchasing department is located. The pay rating in the L. C. A. book is classified; it classifies the pay rating under the head of prompt, medium, slow, etc. It is of great value to sellers from the fact that he can gauge the quantity, and exercise greater judgment in selling to men; he can discriminate between those who are prompt and those who are slow in their methods of pay. There is no information of this character given in Dun's book that I know of. (Rec., 867.)

In my experience of twenty years with this book, have found it very accurate in all its information, and very prompt in giving the information as called for. Have during that time received special reports; they have been accurate. We take Dun's book for a general rating. In the column on the right of the L. C. A. book when the rating was changed we so noted it on the margin; as to the freight rates, I can't say; don't know. There was no such provision for noting changes in the book of Dun & Co."

Albert W. True testified that he was treasurer of the firm of True & True, engaged in handling doors and windows, and that he had been in that line of business in connection with the True & True Company since 1887. (Rec., 872.) He was a subscriber for both Dun and L. C. A. books. He said:

"Our use of the L. C. A. book is based on several features peculiar to that book. The book was typographically made so as permit of various notations and additions and changes which we keep up from time to time in the margin of the book. In addition to this, we base our credits and information regarding a certain class of trade known as hardware dealers largely on the use of that book, the other agency's book not including a special classification for our business. (Rec., 873.) We also obtain peculiar information from the book in the way of novel or direct classification, such as line yards, that is, lumber yards with headquarters in one town and branch yards in numerous places, in that the book states the headquarters for each yard. By 'headquarters' I mean the purchasing departments. That feature involves a marked saving in time and of course a less extent of expense in getting at the principal or head man in the business; we use the book for that

purpose. The key of the L. C. A. is entirely distinct (Rec., 874); a different basis from the Dun book; in that the pay ratings appear, whereas in Dun's book and the larger agency's books the habit of pay was only stated as it pertains to the general credit.

Use the book almost continually as mailing or circular list. It is accurate, up to date. My experience with the book would indicate that it is up to date and of more accuracy than any other book we use, and in consequence of that opinion of its value, we use it more than we can any other book. I should say as a general proposition, this book contains quite a good many names which we do not commonly find in the general agency books; by general agency books I mean the book of the Bradstreet Company and Dun & Co. In the classification of the trade as lumber dealers, as a general proposition, the lumber agency book is very much more like the general agency books, though where we strike the hardware trade, which is solicited largely by us, the names all appear in the general agency book, including Dun & Co., as hardware dealers, whereas in the L. C. A. book they are rated as hardware dealers, sash, doors and blinds, classifying them in a list peculiar to our business (Rec., 875); that list is of considerable value to us. It is the first book, practically, which we consult in establishing our credits. We find the pay ratings of considerable value, inasmuch as we can ascertain the habits of pay from that book as distinguished from the general credit. A concern may have a certain capital rating, we will say $40,000, they may have in addition ample backing, which would make their credit perfectly good and secure. At the same time they may be given to careless business habits and loose methods of paying. I would

illustrate it in that way by stating that the concern would be in good credit, but would be slow pay. The mode of payment is the main feature in establishing a credit rating; there are some other things, but that is the main thing. I mean the credit. The The rating '33' (Kicker), given in the L. C. A. book has a very considerable bearing on our credits. In my use of the L. C. A. book, and the other books to which we have been subscribers, I have always placed the highest confidence and value on the book of the L. C. A. and its predecessor (Rec., 876), the result of a very long experience with them and other books and considerable information on the subject covering a good many years, have found the ratings in that book to be accurate and conservative to a very marked degree. I know only in a general way how it is regarded in the lumber and kindred trades; in a general way I know it is quite generally used among the lumber trade in Chicago and in the Northwest. Have seen the books in offices in various places. Have used this book as the foundation for my opinion of credits. Used the Dun book and the Bradstreet book as supplementary to fill out what information I could get from the other book. In case I have time to consult only one record on a new customer, I take this book; in doubtful points I look this up, and then from other books, whatever I may have; only use the other books to supplement my information found in this book." (Rec., 877.)

C. F. Wiehe testified that he was credit man and secretary of the Edward Hines Lumber Company, which does a business of between six million and seven million dollars a year, and added:

"They are subscribers to the R. G. Dun & Co. book and have been between two and three years. (Rec., 879.) The company is also a subscriber to

the L. C. A. book and has been since our organization in 1892. I have used the book published by the L. C. A. for twenty-three years. I think the L. C. A. book fills the same need as to lumber trade as compared with the Dun book, that a specialist does to a general practitioner. I would class the Dun book as in the list with the general practitioners and Clancy's book as a specialist in that line. We use the Dun book only as a reference book. Clancy's (L. C. A.) book we use for various purposes. First, as a mailing list and as a book to keep records of rates in. (Rec., 880.) We also make notations and memorandum on the leaves of the book. There is a space on the side for that purpose. The shipping guide is used for the routing of cars also. We receive an order for a certain point, and the book is referred to as to the railroad upon which this point is located. It is used as a shipping guide. It is classified as to the different lumber pursuits or lines. For example, it specifies who keeps lumber stocks, who are wholesale, and who are retail buyers, and who are entitled to buy by car loads. It gives the names of the purchasing agent of line yards, and classifies hardware dealers who handle sash and doors and who handle shingles. Classifies saw mill men who manufacture shingles, and who are manufacturing lumber, and if we desire to send a circular out to shingle men, for example, we get Clancy's book and send it to the shingle manufacturers, which can readily be obtained there without much picking out. The book classifies the way people meet their obligations, with the respect to the credit or capital ratings, which is a great advantage to a man extending credit, simply on his method of payment, which Clancy's book supplies. (Rec., 881.)

They have a '33' notation in their book, which is

not found in the Dun book, and is great aid to a dealer, inasmuch as it gives the disposition of the buyer. We also secure special reports from the L. C. A. in particular cases. We have found them very accurate, and I think more so than any of the other agencies. I know how the L. C. A. book and reports are regarded in lumber trade as an authority on lumber credits. It is regarded in lumber trades generally as an authority on lumber ratings and kindred pursuits." (Rec., 882.)

G. J. Pope testified that he is vice-president of the D. S. Pate Lumber Company, and had been in the business since April, 1882, and said (Rec., 892):

"I use the reference book of the L. C. A. It was in use prior to 1882; don't know how much longer; have used it personally as credit man since 1892. We have used the Dun book for about six years, are using it now. The D. S. Pate Lumber Company handles yellow pine. We are handling over fifty million feet annually. We use the L. C. A. book not only as a credit guide, but also as buying guide; furthermore to ascertain the names of users of our material; we regard it as a book of specialties. It gives information which is of use in our line and such information only. Gives us names of buyers, the class of material, the saw mill manufacturers, making a distinction between the hardwood mills, white pine mills and the yellow pine (Rec., 893); information is classified; in the Dun book it is general. We have no way of looking in the Dun book to know whether a man is manufacturing hardwood or yellow pine. We use the L. C. A. book almost entirely in arriving at a basis of credit for men engaged in the lumber business. We use the Dun book when we wish to get reports on the large manufacturing institutions, that may wish to buy one bill of

lumber, or general contractors who operate in a large way. The L. C. A. book is used by us entirely in arriving at a basis of credit on all lumber yard dealers throughout the smaller cities. THE PAY RATINGS ARE OUR CHIEF GUIDE IN EXTENDING CREDITS (Rec., 894); CONSIDER THE PAY RATING MORE RELIABLE THAN THE CREDIT RATING IN THE DUN BOOK, BECAUSE IN MY OPINION IT IS MADE UP OF EXPERIENCE OF THE TRADE OF ANY PARTICULAR CONCERN IN PAYING THEIR BILLS INDEPENDENT OF THE CAPITAL RATING. I understand Dun's credit rating to be based to a certain extent upon their custom in paying their bills, but more largely in reference to their capital worth. The rating '33' (Kicker) always causes us to get a special report written up to date. We then form our opinion as to whether or not the man was entitled to that rating, and if in our opinion he has earned the rating by his past action, we refuse to ship him without some definite and distinct understanding as to his taking the material we ship. Have never seen any rating in the Dun book or key which indicated this character of information. *In extending credits, we consider the pay rating as more important than the capital rating.* In case of line yards in the L. C. A. book it states where the buying office or head office is; this is not found in the Dun book. We make use of the blank margins. The semi-weekly reports are always posted in the margin of the L. C. A. book, and we use them as a guide. (Rec., 895.) In our experience with the information obtained in the L. C. A. book and its reports, we have found them correct and reliable. We have used special reports from the L. C. A. whenever occasion has required any. My experience and information would lead me to state that the reference book and special reports of the L. C. A. are regarded in the lumber

trade as the best authority, taken as a whole on lumber credits and ratings." (Rec., 896.)

George H. Holt testified that he is president of the Holt Lumber Company and American Lumber Company, and said (Rec., 902):

"We handled this year about eighty million feet, pine and hemlock. The Holt Lumber Company is not now, I think, a subscriber to the reference book of Dun. The American Lumber Company is not. The Holt Lumber Company was a subscriber; don't remember down to what date. I think the Holt Lumber Company is a subscriber to the L. C. A. book. Think the L. C. A. book fills a need in the lumber trade which the Dun book did not. It gives us information which the other books do not give. In the first place, it had a list of names we found to be more satisfactory, more up to date (Rec., 903) information with reference to the classification of lumbermen according to their various needs and in relation to them. We found it more convenient and useful in various lines of information which it gave, such as the method of payment. And the fact that a man was what you call a 'kicker' or not, and whether he made unjust claims for deductions. Classifications, much more satisfactory to us, much more convenient to get at the information we wanted, probably other things. We found the freight rate columns, that method of keeping track of our freights, a most convenient way. We enter in the space on the margin of the page the corrections from time to time as do occur to credit ratings or information concerning customers. There was more than one reason for discontinuing the Dun book. We were dissatisfied with the service we got from the Dun Company, and didn't feel that we were getting the worth of our money. In my experience with

the two books found the L. C. A. book to meet our requirements the best." (Rec., 904.)

Edwin E. Hooper testified as follows (Rec., 906):

"I am secretary of the Lumbermen's Association of Chicago. Have been fifteen years. Am familiar with the book published by the L. C. A. Have been ever since I have been secretary. This Lumbermen's Association is an association of all the lumber dealers in Chicago. (Rec., 907.) They handle the rating, look after competition of the north, from the railroads, so they don't have any better rates over the territory than we have from Chicago. We furnish the rates to the lumbermen from our office for particular railroad branches of the business. In connection with my duty as secretary have used the L. C. A. book. We use it for rating. Putting in the rates of lumbermen. I referred to the freight rates or number, that is, what our office use it mostly for. I am not familiar with the book published by Dun & Co. Do not use it in connection with my duties as secretary. I guess we all used the L. C. A. book among our dealers here. It is the only thing we use on lumber classification. (Rec., 938.) We use it entirely for credits and for rates and for anything of the kind."

James E. Defebaugh testified that he is the publisher of the American Lumberman, devoted exclusively to the lumber trade, and was familiar with the L. C. A. reference book since 1886, and said (Rec., 912):

"I have used it in connection with my business as a reference book in a variety of ways. Like most commercial institutions, we want to know the people we are doing business with. (Rec., 913.) We don't enter into business relations with anybody connected with the lumber trade in an advertising way with-

out we know absolutely who they are, and we use various commercial agencies, particularly this one. We desire to know particularly their financial standing. We refer to this book and get reports from them. We are usually well acquainted with the personnel of the trade and that is our especial business. (Rec., 914.) We gather all additional information where we can. Where circumstances suggest it from those or other sources. In consulting the book published by the L. C. A. we take into account the pay ratings that are given. That is the most important as a matter of fact. There is information regarding that matter in the book of the L. C. A. That gives special information regarding methods and standing of people other than purely financial. It is indicated as part of the key. I refer to the pay ratings. We use the Dun book and other lumber agencies. The L. C. A. and its special reports stand as a special agency exclusively for the trade and consequently is looked upon as their particular source of information. It is looked upon as perhaps the most aggressive and reliable." (Rec., 914.)

A. S. Badger testified that he is president of Badger & Jackson Company (Rec., 919; that in 1902 this company shipped 60,000,000 feet of lumber. He added:

"I am familiar with the reference book of the L. C. A.; am using it and have been since 1876. (Rec., 920.) We use it daily in looking up the ratings of parties, what line of business they are in, what railroad reaches the point they are at, and various other information. We don't fill in the freight columns or follow them fully. We make various notations and corrections in the blank space at the right. The book is very complete as a guide

for mailing lists; we use it for that purpose. Do not use any other reference book at present. In years past we have used most all of the books and we liked the Lumbermen's book better. Think it the most complete, comprehensive and satisfactory book that rates the lumber trade. It is used extensively and almost universally, and considered the standard of the credit ratings in the lumber trade by lumber dealers. It is regarded as the best credit guide there is in the lumber trade. (Rec., 921.) We regard as important the pay ratings, shows whether dealers are prompt, medium or slow pay; general credit ratings does not give much definite information and says, 'fair, or good, or high'; consider it a great advantage to know whether parties are wholesale dealers, or pine lumber, or hardwood, or only planing mills, or what particular branch of the lumber business they are engaged in; consider the rating '33' (kicker) most important and essential; it shows from past experience whether parties are inclined to find fault unjustly, or whether they are fair and reasonable in their settlements, and the party rated '33' we would not sell lumber to. We have found the information with reference to the purchasing departments, line yards, a very great advantage, as it saves us sending salesmen to towns where the purchasing is not done, and enables us to tell just where to send our men to the purchasing offices of all the concerns in the lumber business. The classification indicates the wholesale dealers who do not have a yard and carry a stock. This is a great advantage, because if people are in the wholesale lumber business and have no yard, it shows that they have to buy to sell again to a third party, which makes more people to please on the quality of the lumber than if it goes direct to the first purchaser.

(Rec., 922.) It makes a very material difference as to a person's credit standing; if they are going to use the lumber themselves there is only one party to please, and it is on your own representation; if they sell to a third party it is on their representation, and there is more opportunity for misunderstanding; it has an influence upon us as to a person's desirability; we would rather sell to a man that has the lumber in his own hands; would not regard a man wanting to buy lumber who did not have a yard or stock on hand as good a risk as one who did, because a man that has a lumber yard has the full control in his own hands of the disposition of the lumber; he can file a lien and it is entirely in his hands how he disposes of the lumber; there is something with reference to having tangible assets in their possession.

We use all the ratings. We use the rating '63,' 'regarded as consumers by retail lumber association.' We wouldn't sell to anybody rated 63, because we sell to lumber dealers exclusively. We considered the rating '7,' 'if interested, inquire at office,' very valuable, as it shows the party should not be sold without more definite information." (Rec., 923.)

W. G. Kimball, local manager of the Pittsburg Plate Glass Company, said (Rec., 925):

"I am familiar with the reference book of the L. C. A. and have been for several years. Became familiar with it by using it to get information on the credit of people in the lumber business. (Rec., 926.) We get a more definite report on the person or firm asked about, especially in their rating of pay and present condition, from this book than from the general agency's book. Do not use the L. C. A. book for any other purpose than as a basis of extending

credit. Do not use it as a mailing list; use other reference books, Dun's and Bradstreet's. We have been better satisfied with the information we had from the L. C. A. book with people in the lumber business, and that is a line we sell considerably, than any of the other books we have used."

An inspection of the two books by the court will reveal a marked distinction between complainants' reference book and that of defendants. The experience of men in the lumber and kindred trades, who have used the two books for more than ten years, is that the L. C. A. is the superior book of the two and gives a great deal of information that is not contained in the Dun book. The appellees' book also has more reliable information and is regarded as more conservative in its ratings than the Dun book. Its definite pay ratings are considered as entirely different from and vastly more important in the determination of credits than the general credit ratings of Dun & Co.

The character of the lumbermen who testified must certainly indicate that the L. C. A. book, instead of being a servile imitation, is a book which stands by itself and is far superior in every way to the Dun book. The complainants did not introduce any evidence to show that the Dun book was regarded more highly by the lumbermen than the L. C. A. book, or to rebut in any way the evidence of the lumbermen who testified in behalf of the defendant.

It certainly would not be possible for the defendants' book to be regarded by lumber dealers with increasing favor year after year, if it merely contained information copied from the Dun book, where it depends for its subscriptions upon the lumbermen who are familiar with both books. They certainly

would not subscribe for the L. C. A. book if it was a mere copy of the Dun book, when, as in a large majority of cases, they have both books. Their testimony, however, is to the effect that it fulfilled a different purpose altogether from the Dun book, and was more conservative and reliable, and we submit, therefore, that the testimony overwhelmingly proves that the L. C. A. book differs in nearly every material respect from the book of the complainants, and that the former is not an infringement of the latter book.

IV.

THE AUTHOR OR PUBLISHER OF A BOOK OR COMPILATION MAY MAKE USE OF ANOTHER'S COPYRIGHTED BOOK AS A GUIDE TO AUTHORITIES, FOR SUPPLYING SUGGESTIONS AS TO THE TREATMENT OF THE SUBJECT AND FOR THE PURPOSE OF COMPARISON AND CHECKING THE ACCURACY OF HIS OWN WORK AND SUPPLYING OMISSIONS THEREIN.

IT IS ALSO NECESSARY IN ORDER TO CONSTITUTE PIRACY THAT THE PART TAKEN SHOULD BE MATERIAL, AND THAT THE AUTHOR ENTITLED TO PROTECTION SHOULD BE INJURED THEREBY.

COPYRIGHT IS NOT ALWAYS INVADED BY REPRODUCING A PART OF THE WORK. TO CONSTITUTE AN INFRINGEMENT A MATERIAL AND SUBSTANTIAL PART OF THE WORK MUST BE TAKEN.

These principles are laid down by a long list of authorities.

Drone in his work on Copyright, page 396, elaborates upon the question of justifiable use in the following language:

> "In the recent English Directory cases, the law was forcibly and clearly expounded to the

> effect that a compiler of a directory MAY USE A COPYRIGHTED RIVAL WORK AS A MEANS OF LEARNING THE NAMES AND PLACES OF RESIDENCE OF THE PERSONS TO BE CANVASSED; OF AVOIDING OMISSIONS AND ERRORS IN HIS OWN PUBLICATION, AND GENERALLY AS A GUIDE IN THE PUBLICATION OF HIS OWN. But in no case may he save himself the labor and expense of canvassing, by copying or otherwise appropriating the result of his predecessor's labor. In all cases he must obtain the information at his own expense and by his own labor, independently of the copyrighted work, which may be used only as a guide."

In the case of

Kelly v. *Morris*, L. R. 1 Eq., 697,

it was said:

> "Where a publication in controversy was a general directory, it was held that the only legitimate use which a subsequent compiler can make of a copyrighted directory already published is for the purpose of verifying the correctness of the results reached by his own independent efforts in obtaining information."

In the later case of

Morris v. *Wright*, L. R. 5 Ch. App., 297,

it was held:

> "The subsequent compiler can use a directory previously published for the purpose of directing himself to the persons from whom such information is obtained."

In the case of

Simms v. *Stanton*, 75 Fed. Rep., 6 (C. C. Calif., 1896),

the court held:

> "A later writer on an art or science like physiognomy, though consulting and using the works of an earlier writer on the subject, will not be held to have pirated, but to have made a fair use of them; it not appearing that they have been drawn from to a substantial degree, notwithstanding there are some errors common

> to both, and they have a similar division of system as a basis, such division being only a somewhat altered form of a division of a work of previous writers, from which they both had a right to draw material." The court says: "Applying this view of the law to the case at bar, the material elements of piracy appear to be wanting. The errors which complainant claims have crept into respondent's works, tending to show that she must have copied from his works, are not important enough, in my opinion, to establish the fact of servile copying or piracy. * * * It is my opinion that while the respondent did consult and use complainant's works, she has not drawn from them to a substantial degree. * * * The bill will, therefore, be dismissed."

One of the latest constructions that has been given to the question of justifiable use was in the case of

> *Edward Thompson Co.* v. *American Law Book Co.*, 122 Fed. Rep., 922,

where an exhaustive review was made of the leading authorities. It was decided by the Circuit Court of Appeals, Second Circuit, July 1, 1903. The complainant in that case was the publisher of two encyclopedias, one of American and English law, and the other of Pleading and Practice. The defendant was compiling a work called "Encyclopedia of Law and Procedure," two volumes of which were published when this action was commenced, December, 1901. The complainant alleges that these volumes infringed his copyrights.

The court, in its opinion, said:

> "The only act of the defendant which is complained of is this: Lists of all the cases bearing upon a given subject, including the cases found in complainant's books, were put in the hands of the editor chosen to develop that subject. The list of complainant's cases contained authorities not found in the digests. The original re-

ports of these cases were examined by the editor, and, if the cases were found applicable, they were cited by him in support of his article; if not, they were rejected. There is no pretense that a word of the complainant's text has been copied; in fact, the defendant's editors were not permitted to open the complainant's books. The list of cases furnished the editor was not copied in the defendant's work, and the only use made of the list was as a guide to the volumes where the cases were reported.

Briefly stated, then, the question is this: Is a copyrighted law book infringed by a subsequent work on the same subject where the only accusation against the second author is that he collected all available citations, including those found in the copyrighted work, and, after examining them in text-books and reports, used those which he considered applicable to support his own original text? We are of the opinion that this question must be answered in the negative. The doctrine contended for by the complainant extends the law of copyright beyond its present bounds, and if pushed to its logical conclusion will inflict a far greater injury upon literature than it can ever expect to prevent. If it be held that an author cannot consult the authorities collected by his predecessors, the law of copyright, enacted to promote the progress of science and useful arts, will retard that progress. It will be found upon examining the reported cases that there has been a finding of non-infringement unless it appears that the whole or a part of the copyrighted work has been copied, either *in haec verba* or by colorable variation.

In *Pike* v. *Nicholas*, L. R. 5 Ch. App., 263, it was held that the defendant was not permitted to copy a passage from another author directly from the plaintiff's work, 'but having been put on the track, and having looked at that particular part of the book which the plaintiff led him to, he was entitled to make use of every passage from that author which the plaintiff had made use of.'

In *Morris* v. *Wright*, L. R. 5 Ch. App., 297, it was decided that if the defendant 'used the

plaintiff's book in order to guide himself to the persons on whom it would be worth his while to call, and for no other purpose, he made a perfectly legitimate use of the plaintiff's book.'

In the case of *Moffatt* v. *Gill*, 86 Law Times Rep., 465, which the complainant quotes with approval, infringement was found because it was abundantly shown that 'not only have the quotations in substance been taken, but the letter press connecting them has also in substance been taken in a great many instances and particularly in the character sketches.' The court, however, expressly recognizes the right of a subsequent author to do what the defendant in the case at bar has done. In speaking of the cases relating to directories, the court says: 'YOU CANNOT, WHERE ANOTHER MAN HAS COMPILED A DIRECTORY, SIMPLY TAKE HIS SHEETS AND REPRINT THEM IN YOUR OWN. YOU ARE ENTITLED, TAKING THE SHEETS WITH YOU, TO GO AND SEE WHETHER THE EXISTING FACTS CONCUR WITH THE DESCRIPTION IN THE SHEETS, AND IF YOU DO THAT, YOU MAY PUBLISH THE RESULTS AS YOUR OWN.'

To the same effect are *List Pub. Co.* v. *Keller* (C. C.), 30 Fed., 772; *Jarrold* v. *Houlston*, 3 Kay & J., 708; *Simms* v. *Stanton* (C. C.), 75 Fed., 6; MacGillivray on Copyright, 103; *Mead* v. *West Pub. Co.* (C. C.), 80 Fed., 380.

Counsel for complainant, in order to illustrate their position, put the following question: 'Suppose the author of a dictionary of quotations inserts after each quotation, as is customary, the book and page of the original author, will it be contended that the compiler of a subsequent book of quotations could have his clerk copy a list of all the references contained in the first author's book without copying the quotations and could then go to the original authors and copy the quotations found at the pages indicated by the references? Yet he would have an undoubted right to do this if the contention in the appellant's brief is sound.'

Assuming that the question is answered in the negative, we do not think the conclusion follows. It may very well be that the second compiler would not be permitted to copy the quota-

tions and for the reasons suggested by Lord Collins in *Moffatt* v. *Gill, supra.* He says: 'That (the defendant's contention) leaves out the whole merit, the felicity of the quotation, its adaptability to a particular end, its illustration of a particular characteristic. All these things enter into the choice of one quotation as apart from another. That is a process which may involve gifts both of knowledge and intelligence.'

The difficulty with the counsel's hypothesis is that the case stated is not the case made by the proofs. The defendant has not copied a sentence or a word from the complainant's book and, of course, has not appropriated the skill and taste of the complainant in selecting or arranging quotations or any other matter. If, in the case put, the subsequent compiler had simply made, in connection with other lists, a naked list of the authors quoted, it cannot be doubted that he would have the right to select from their works such quotations as he desired.

It is well known that Motley produced his great work after years of patient research among the the original archives preserved at The Hague and other European capitals and that he brought to light and translated documents which had lain dormant for centuries. The data thus collected enabled him to tread an almost undiscovered path of history. But can it be contended that a subsequent historian of the Netherlands would be debarred from consulting the same sources of information because he was guided to them by a list made up from Motley's foot-notes? It is thought not. The literature of the law as it exists to-day is the result of evolution. Each author has the benefit of all that preceded him, and has thus been able to add something to the common fund intended to lighten the labors of the profession. It would be a serious blow to jurisprudence were the rule enunciated that the author of a law book is precluded from taking a list of authorities cited by a previous writer on the same subject and making an independent examination of them. Individuals might profit, but the development of

> legal science would be hampered by such a rule, a rule not of advancement, but of retrogression."

One of the latest decisions on the question of justifiable use was in the case of *Mary B. Dun et al.* v. *International Mercantile Agency*, in the Circuit Court of the United States for the Southern District of New York, 127 Fed., 173, on the motion for a temporary injunction.

The following is an extract from the opinion which was filed by Justice LACOMBE, December 19, 1903:

> "It is not disputed that defendant made use of complainants' book in preparing its own publications. Thanks to such use, it discovered the names of individuals, firms and corporations engaged in business, and, therefore, desirable for inclusion in its book, which names had apparently not been discovered by the investigations of defendant's own canvassers, nor found *in some other publication*. The names thus obtained from complainant's book aggregated certainly hundreds, possibly thousands. Was this an unfair use of the complainant's book? Had this question been presented to this court a year ago the answer might not improbably have been in the affirmative. Such use of another's compilation was approved in *Moffatt* v. Gill, 86 Law Times Rep., 465, but that decision was not controlling here, and for reasons assigned in *Colliery Engineering Co.* v. *Ewald* (U. S. Circuit C. S. D. N. Y., Oct. 19, 1903), it was thought that its conclusions were harsh and inequitable. Nevertheless, propositions, which work hardship to the individual, are sometimes sustained on grounds of public policy, and the opinion of the Court of Appeals of this Circuit in *Thompson Co.* v. *American Law Book Co.* (July, 1903, 122 F. R., 922), expressly approves the doctrine of *Moffatt* v. *Gill*. In view of that decision, which is, of course, controlling here, injunction cannot be granted upon the undisputed facts."

In *Sampson-Murdock Company* v. *Seaver-Radford Company,* 134 Fed., 890, the question arose as to the proper use of a copyrighted book.

This was a suit brought by one compiler of a general directory of the City of Boston, against a later compiler of a similar work for infringement of copyright. The question arose as to the legitimate use of a copyrighted directory. It was assumed that a directory was within the protection of the copyright law. The master held that:

> "A compiler of a general directory has the right to use a prior general directory, both to verify the results of his own work, and to show him and direct him to the persons upon whom it may be worth his while to call.
>
> One who is compiling a general directory of a city has the right, after making his own canvass, to take a part of the names and addresses contained in another general directory, go to the original sources of information, ascertain how far the existing facts concur with the statements of the first directory, and then to print and publish the result as his own, abandoning what is not found, and changing what his investigation shows should be changed, and printing without change, what he has, by means of his own investigation, found to be correct."

The master further found that the right to do as above stated is not lost by reason of the fact that a person in going to the source of information takes with him memoranda of names and addresses copied from the first directory, changing them when his investigation shows they should be changed to correspond with the facts, and checking them as correct when they prove to be correct.

The court overruled the exceptions to the report of the master, and confirmed the findings of fact and conclusions of law.

The cases of *Thompson Co.* v. *American Law Book Company, supra,* and *Dun* v. *International Mercantile Agency, supra,* were cited with approval. The court said in its opinion:

> "This cause has already been before the court upon the question of preliminary injunction. 129 Fed., 761. After action had been taken on that question the case came before us on bill, answer and replication, under the practice of the court in such cases, was referred to John G. Stetson, as master, to hear the evidence, find the facts, and report to the court his findings of fact, his conclusions of law, and such portions of the evidence as either party might request, or as he might deem useful to the court. The master has fully heard the parties, and has filed his report, which clearly presents the whole matter for our consideration. The leading and vital contention of the complainant is that the master made an error in ruling that 'one who is compiling a general directory of a city has the right, after making his own canvass, to take a part of the names and addresses contained in another general directory, to go to original sources of information, ascertain how far the existing facts concur with the statements of the first directory, and then to print and publish the result as his own, abandoning what is not found and changing what his investigation shows should be changed, and printing without change what he has, by means of his own investigation, found to be correct.' In our former decision we found it necessary to refer to this subject and to discuss it briefly. We stated the leading English authorities, and the cases presenting the conclusions of the federal courts of this country. We referred to the late cases: *The Thompson Co.* v. *American Law Book Company*, 122 Fed., 922, 59 C. C. A., 148, 62 L. R. A., 607, and *Dun* v. *International Mercantile Agency* (C. C.), 127 Fed., 173. We then said:
>
> 'It seems to us that there is a strong reason for holding that the publisher of a new directory has the right to take an old directory and

be guided by it to original sources of information, and that, if so guided, he goes to those sources of information and obtain facts, he may publish those facts, even though they consist of names and addresses which are identical with those published by the old directory. But upon this motion for a temporary injunction, it is not necessary nor fitting for the court to pass upon this question.'

As the case now comes before the court, it is necessary to pass upon the question. We see no reason for coming to a different conclusion from that suggested in our former opinion. The American cases which we have just cited, contain the latest expression of the federal courts upon the subject, and must control our action. The learned counsel for complainant has presented a very able argument, insisting that the court should not allow a compiler of a directory to verify his own work by a former directory; that he should not be permitted to go to original sources pointed out by the former directory, and after verifying the statement of the former directory, then to publish the names and addresses if they are identical with those published in a former directory. But the action which we indicated in our former opinion amounts to something more than mere verification. For example, let us suppose that in July a publisher is obtaining information from which he proposes to publish a directory. He takes an old directory which had been compiled the preceding January. In that directory it appears that John Smith was in January a lawyer at No. 1 Tremont street. With the information contained in the January directory, the compiler of the July directory goes to No. 1 Tremont street on July 1st and finds that John Smith is a lawyer; that he has at that date an office at No. 1 Tremont street. The directory maker has a right to publish this information in his July directory. He cannot be precluded from so publishing it by the fact that the maker of the January directory has stated that the same facts existed in the preceding January. The maker of the Jannay directory may or may not have stated

> the truth as to John Smith at that time, but the compiler of the July directory may, in his directory, state the facts as they exist on July 1st relating to John Smith, whether those same facts existed or not, the previous January, and whether they were stated or not in the January directory. The compiler of the July directory is not merely verifying and quoting. He is obtaining facts from original sources, using the old directory only to guide him to those sources. Facts so obtained he may publish in his compilation. He cannot be prevented from such publication by the fact that the same things were true in January, and were stated by a former compiler."

While it is true that this case was reversed in 140 Federal, 539, we believe that even if a directory is within the protection of the copyright law, still the opinion of the Circuit Court contains a clearer and more correct statement of the law than the opinion of the Court of Appeals. It will be observed that both these courts proceeded on the theory that a directory was within the protection of the copyright law.

In the VI section of our brief we cover the question as to why a directory is not copyrightable. Assuming that a directory of mere names and addresses is within the protection of the copyright law, the decision of the Circuit Court is more in harmony with the weight of authority. The decision of the Court of Appeals in the above case is a radical departure therefrom.

Counsel for appellants have become so enthusiastic in their exposition of the case of *Sampson-Murdock Co.* v. *Seaver-Radford Company, supra,* that they have placed themselves clearly beyond the pale of the copyright law. Counsel say (p. 61 of their brief):

> "The books in question" (referring to the Dun and L. C. A. reference books), "are not literary productions, nor historical nor scientific in their character, but are prepared and published for a purely commercial purpose. * * * Those cases which permit a liberal use of a copyrighted work for the advancement of learning or the development of science have no application to the books in question."

Again, on page 34 of their brief, counsel contend that the books of appellants and appellees do not advance or develop any useful art or science. If this be true, and we agree with counsel that it is, then APPELLANTS' BOOK IS NOT COPYRIGHTABLE AND THEY CANNOT MAINTAIN THIS SUIT.

The Constitution of the United States, under the eighth paragraph of Section 8, Article I, provides:

> "The Congress shall have power * * * to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

Congress has no power to pass a copyright law to protect any book, except such as tends to promote the progress of science and useful arts. If, therefore, as counsel for appellants themselves admit and assert, appellants' book does not tend to advance or promote the progress of any science or useful art, it does not come within the provisions of the copyright law, and this suit must fall of its own weight.

TO CONSTITUTE INFRINGEMENT IT IS NECESSARY THAT A MATERIAL AND SUBSTANTIAL PART OF THE PRIOR WORK BE TAKEN.

In Drone on Copyright, page 413, the law is stated as follows:

> "When part of a copyrighted production has been produced in another publication, and espe-

cially when liberal extracts have been made, one of the first questions to be determined is: whether the person charged with piracy has acted within the privilege of a fair use. Then arises the inquiries, whether the part taken is material, and whether the author entitled to protection is thereby injured.

No fixed rule can be given for determining what amount of copied or borrowed matter is essential to constitute infringement; or, in other words, how small may be the quantity taken and still amount to piracy. The authorities agree that when the quantity taken is material and enough to cause substantial injury to the author entitled to protection, a case of infringement is made out. The determination of this question of fact is often one of extreme difficulty and the finding will vary with the circumstances in each case, and with the judgment of the person or persons whose duty it may be to ascertain the fact. THE RATIO WHICH THE PART BEARS TO THE WHOLE FROM WHICH IT IS TAKEN WILL OFTEN BE A MATERIAL CONSIDERATION, and it is obvious that no relative or fractional part of either production in controversy can be fixed as a standard measure of materiality. The amount of material in one case will be unimportant in another. 'If so much is taken,' said Mr. Justice Story, 'that the value of the original is sensibly diminished, or the labors of the original author are substantially, to an injurious extent, appropriated by another, that is sufficient, in point of law, to constitute piracy *pro tanto*.' (See *Folsom* v. *Marsh*, 2 Story, 115.) In determining whether the part taken is material in extent and importance, a variety of circumstances must be considered; THE ABSOLUTE AMOUNT AND VALUE OF THE PART; ITS RATIO TO THE WHOLE FROM WHICH IT IS TAKEN, AND TO THE WHOLE IN WHICH IT IS AFTERWARDS INCORPORATED; its relative value to each of the works in controversy; the purpose which it serves in each; how far the later work may tend TO SUPERSEDE THE ORIGINAL OR INTERFERE WITH ITS SALE; to what extent the original author may be injured, actually or potentially.

by the unlicensed use made of his production; and many other special considerations which need not here be mentioned."

In Am. & Eng. Enc. of Law, Vol. 7, page 572, the following principles are set forth:

"Whether the use made of a copyrighted work is to be deemed to be a fair or justifiable use, or is to be considered an infringement of copyright, depends upon a variety of considerations. THE AMOUNT OF THE MATTER APPROPRIATED IS, OF COURSE, IMPORTANT, but it is not always of controlling importance. The question whether there is an infringement of copyright or not, is often affected by other considerations, as the value of the material taken, and the importance of it to the sale of the original work.

It has been said that in deciding questions of this sort the court must look to the nature and objects of the selections made, and quantity and value of the materials used, AND THE DEGREE IN WHICH THE USE MAY PREJUDICE THE SALE OR DIMINISH THE PROFITS OR SUPERSEDE THE OBJECTS OF THE ORIGINAL WORK. The question of piracy in all cases is whether A MATERIAL AND SUBSTANTIAL PART OF THE PRIOR WORK HAS BEEN TAKEN."

See, also:

Chatterton v. *Cave*, 10 L. R. C. P., 572.
Drury v. *Ewing*, 1 Bond (U. S.), 540.

On page 573, Vol. 7, Am. & Eng. Enc. of Law, the following principle is stated:

"To constitute an infringement, a material and substantial part of the work must have been taken."

Drone, in his work on Copyright, says:

"Where only a small part of the defendants' publication has been copied from that of the plaintiff, the piracy may be so slight as to create a doubt whether it is a proper case for the interference of a court of equity. The matter copied may be so inconsiderable in quantity or value, it may form so small a part of the

> publication complained of, and be so scattered through it, the piracy may cause so little injury to the plaintiff, and enjoining the defendant's publication may lead to consequences so serious to him that an injunction may produce a mischief far greater than that sought to be prevented. In such case the court may leave the plaintiff to seek his remedy at law."
>
> "The piracy proved," said Lord Cottenham (*Lewis* v. *Fullarton*, 2 Beav., 11), "may be so inconsiderable and so little likely to injure the plaintiff that the court may decline to interfere at all, and may leave the plaintiff to his remedy at law."

And so in *Mawman* v. *Tegg* (2 Russ., 394), Lord ELDON said:

> "But after the quantity of matter which has been copied has been thus ascertained, the quantity of matter not piratical with which the piratical matter has been intermixed, is still a circumstance of great importance; for though the court has long entertained the jurisdiction of protecting literary property by injunction, there may be much doubt whether it would exercise the jurisdiction where only a few pirated passages occurred, and would not rather in such a case leave the complaining party to his action at law."

No general rule can be laid down for determining what course should be followed under such circumstances. It will depend upon the facts in each case. "It must appear," said Vice Chancellor Shadwell (*Bohn* v. *Bogue*., 10 Jur., 421), "Where a complaint is made to this court, that the piracy has either been of what is called 'a large part' or of a material part." The value of the matter taken will often be a more important circumstance than the quantity.

When the piracy is important, and the consequent injury to the plaintiff material, an injunction is usually granted, notwithstanding the serious consequences to the defendant, unless, perhaps, there is

a marked inequitable disproportion between the wrong complained of and the remedy asked. BUT, WHERE THE OBJECTIONABLE MATTER FORMS BUT A SMALL PART OF THE DEFENDANT'S PUBLICATION, THE COURT WILL COMPARE THE DAMAGE DONE TO THE PLAINTIFF WITH THAT WHICH THE DEFENDANT WILL SUSTAIN IF THE INJUNCTION IS GRANTED, AND WILL HESITATE TO DESTROY THE ENTIRE WORK IN ORDER TO REDRESS A VERY SLIGHT INJURY.

The court must sometimes incur the hazard of occasioning injurious consequences to one party or the other, and the aim will be to take that course which is most equitable in view of all the circumstances.

Spottiswoode v. *Clarke*, 2 Phil., 154.
McNeill v. *Williams*, 11 Jur., 344.
Pike v. *Nicholas*, L. R., 5 Ch., 251.
Webb v. *Powers*, 2 Woodb. & M., 497.

In cases where the invasion of copyright is slight, as to both the quantity and value of the matter copied, and the pirated matter is quite out of proportion to the mass of the original matter, the court will not, as a general rule, interfere by way of injunction, and will leave the plaintiff to his remedy at law for damages.

Am. & Eng. Enc. of Law, Vol. 7, 585.
Mawman v. *Tegg*, 2 Russ., 394.
Bailey v. *Taylor*, 1 Russ. & M., 73.
Sweet v. *Cater*, 11 Sim., 572.
Greene v. *Bishop*, 1 Cliff. (U. S.), 203.
10 Fed Cas., n. 5763.

The court will also take into consideration the comparative injury which is likely to result to the respective parties in consequence of granting or denying the injunction, inasmuch as the granting of a

writ of injunction rests in the sound discretion of the court, to be exercised upon all the circumstances of the case, and the object being to prevent mischief, the writ will not be issued where very great injury would be likely to ensue to the defendant from granting the motion, and little or none to the plaintiff from its denial.

Am. & Eng. Enc. of Law, Vol. 7, 588.
McNeill v. *Williams*, 11 Jur., 344.
Spottiswoode v. *Clark*, 2 Phil., 154.
Scribner v. *Stoddart*, 21 Fed. Cas., 12561.
Hanson v. *Jaccard Jewelry Co.*, 32 Fed. Rep., 202.
Goldmark v. *Kreling*, 25 Fed. Rep., 349.
Arnsworth v. *Bentley*, 14 F. R., 630.

Equity will not interfere by injunction where the amount copied is small or of little value, if there is no proof of bad motive.

Lawrence v. *Dana*, Fed. Cas. No. 8, 136 (4 Cliff., 1).

In the case of *Webb* v. *Powers*, Fed Cas. No. 17323, 2 Woodb. & M., 497, defendant's book called "The Flower Vase" had, like the plaintiff's prior book, called "Flora's Interpreter" the class order, the description of the flower placed on the same page with its name and interpretation as first used by plaintiffs, and had copied *verbatim* twenty definitions out of 148, consisting of 156 words. In nineteen cases parts of the prose description, etc., were the same. It appeared that plaintiffs had also copied other matter from previous compilers in a similar manner. The books in other respects were unlike and defendant's work was in substance original, and was much smaller than plaintiff's work. The court held that while the copying might be an infringement, it was not sufficient ground for an in-

junction, especially where the arrangement pervaded the whole work, and could not be easily separated, and where there was no intention of piracy.

> "The leading inquiry in such case," said the court, "is whether the book of the defendants, taken as a whole, is substantially a copy of the plaintiff's, and whether it has substantially the same plan and motive throughout, and is intended to supersede the other in the market with the same class of readers and purchasers, and without introducing new matter, and with only colorable deviations.
>
> Some similarities and some use of prior works, even to copying of small parts, are tolerated in some kinds of books, such as dictionaries of all descriptions, gazeteers, grammars, maps, arithmetics, almanacs, concordances, encyclopedias, itineraries, guide books and similar publications."

Counsel for appellants have cited several authorities which they contend apply to this case. We have examined each one of them and find that they are not applicable.

The case of *List Publishing Company* v. *Keller*, 30 Fed Rep., 772, differs from the case at bar in that no original information whatever was produced; whereas the Lumberman's Credit Association has produced original information as to each and every name in controversy.

In the case of *Chicago Dollar Directory Company* v. *Chicago Directory Company*, 66 Fed. Rep., 977, it was shown that there were names in defendants' directory of persons located at places where the canvassers testified they did not cover. There was an utter absence of all evidence in writing as to defendants' acts, etc., relating to the original canvass. It also appeared that in the work of the compilers no dispatching was done, save in the building which defendants then occupied. There were many con-

tradictions in the testimony of the witnesses, and many similarities between the two works, which, in the absence of the original manuscript, would raise a presumption of piracy. This case, moreover, is not an opinion given upon a final hearing, but upon an appeal from an interlocutory order granting an injunction. The opinion of the court is seven lines in length, and in it the court says that it does not enter upon a review which might prejudice the final hearing.

In the case of *West Publishing Company* v. *Lawyers Co-Operative Publishing Company*, 79 Fed. Rep., 756, the master found that 303 of 548 selected paragraphs contained internal evidence of piracy, and to his finding defendant did not except. The records of the authorship of the paragraphs complained of were not produced, and the similarities which appeared in 303 different instances were so striking as to raise the presumption that one was copied from the other. These similarities are set forth in pages 773 to 784 of the 79th Fed Rep. and an inspection of them will convince anyone that there is no parallel between the West Publishing Company case and the case at bar. There was no written evidence produced by defendants to convince the court of the good faith of their operations. Even in that case it appeared that defendants' principal editor had digested some 7,000 of the entire 13,300 cases digested from complainants' pamphlet. Two of these cases were found to contain verbal identity, and the court held that the denial of such editor that he had made any use of the syllabus was sufficient to rebut complainants' *prima facie* case so far as concerned his own work.

In the case of *Trow Directory, Printing & Bookbinding Company* v. *Boyd*, 97 Fed. Rep., 587, which

was heard upon motion for preliminary injunction, the moving affidavits made a strong showing of infringement and the defendant failed to furnish the testimony of the canvassers whose work was attacked, or the lists returned by them. The court in that case merely made an order directing the defendants to file a bond to respond for any damages or profits to which the complainant might be ultimately held entitled.

In the case of *Bisell* v. *Welch*, 131 Fed. Rep., 564, there were many errors and omissions appearing in both works, which were copyrighted digests of the laws of Pennsylvania. The defendant offered absolutely no explanation as to why these similarities occurred, except to say that they occurred accidentally. The errors were so glaring as to raise the presumption of piracy, which was not rebutted by a particle of evidence. Even in this case, which was a motion for a preliminary injunction the court said:

> "It may be that at the final hearing, he can explain and satisfy the court that there was no copying of the supplements in his Brightly."

In the case of *Kelly* v. *Morris*, L. R. 1 Eq., 701, 703, which is a suit for infringement of a directory, the defendant reprinted the information copied from the complainant's book, bodily.

In *Morris* v. *Ashby*, 7 L. R. Eq., 34, there was no attempt by defendant to improve upon or get any additional information other than that contained in plaintiff's directory. Defendants' book was a mere servile imitation of plaintiff's.

In *Banks* v. *McDavitt*, 13 Blatchf., 163, the piracy was shown by a comparison of the two books. It was palpable. The injunction merely related to a portion of the contents of the book, and the court

said that a provisional injunction would not be attended with serious injury.

In the case of *Callaghan* v. *Myers*, 128 U. S., 617, piracy was plainly and conclusively shown by a comparison of the two books.

In the case of *Sampson Murdock Co.* v. *Seaver Radford Co.*, 140 Fed. Rep., 539, the defendant verified a copy of the plaintiff's directory and published the copy. It made no effort to get any new or additional information. There was no evidence offered, as to the alleged piratical portion of the book of the Seaver-Radford Co. on the question of good faith.

The cases cited by appellants are nearly all of them old decisions which are not explicit. They do not go into the subject of infringement of copyright in detail as do the latest decisions, such as *Moffat* v. *Gill*, 86 Law Times Reports, 465; *Thompson Co.* v. *American Law Book Co.*, 122 Fed., 922; *Dun* v. *International Mercantile Agency*, 127 Fed. Rep., 173.

After careful examination and analysis of all the above mentioned cases and authorities, we submit to the court that there is such a thing as a justifiable use by one author or publisher of the works of another author or publisher, and that an author or publisher is within the bounds of such legitimate use so long as he uses the earlier publication merely as a guide to authorities, for supplying suggestions as to treatment of the subject and for the purpose of checking the accuracy of his own work and supplying omissions therein. One in compiling a work such as a directory or commercial reference book has a right, in making his own canvass, to take a part of the names and addresses contained in another copyrighted work, go to the original sources of

information, ascertain how far the existing facts concur with the statements of the first work, and then to print and publish the result as his own, abandoning what is not found, and changing what his investigation shows should be changed and printing what he has by means of his own investigation found to be correct at the time such investigation was made. And such right is not lost by the fact that a person in going to the original sources of information takes with him memoranda of names and addresses from the first work, changing them when investigation shows they should be changed to correspond with the facts and checking them as correct when they prove to be correct.

It is also necessary to constitute piracy that a material or substantial part of a work be taken.

V.

THE ONLY USE MADE BY APPELLEES' OF APPELLANTS' BOOK WAS TO TRANSFER CERTAIN NAMES AND RATINGS THEREFROM INTO A BLANK BOOK COMMONLY CALLED THE "RED BOUND BOOK", TOGETHER WITH CERTAIN NAMES AND RATINGS FROM BRADSTREET'S REFERENCE BOOK. THE ONLY USE MADE BY APPELLEES OF THE RED BOUND BOOK WAS AS A MEANS OF DIRECTING APPELLEES TO THE ORIGINAL SOURCES OF INFORMATION, AND IN ABOUT ONE PER CENT. OF INSTANCES FOR THE PURPOSE OF COMPARING THE RESULTS REACHED BY APPELLEES' OWN INDEPENDENT EFFORTS WITH THE NAMES AND RATINGS IN THE RED BOUND BOOK.

IN THE CASE OF ALL SUCH NAMES AND RATINGS INDEPENDENT INVESTIGATION WAS MADE AT ORIGINAL SOURCES AND THIS ORIGINAL INFORMATION ALWAYS FORMED A BASIS FOR AND CORRESPONDED WITH THE RATING AND INFORMATION GIVEN IN APPELLEES' REFERENCE BOOK.

IN NO INSTANCES WERE NAMES OR RATINGS IN THE RED BOUND BOOK COPIED, EITHER DIRECTLY OR INDIRECTLY, INTO APPELLEES' BOOK.

In a preceding section of this argument, we have dwelt at length upon the different sources of information used by the defendant in making up its reference book. These consisted principally of the following:

Revision Blanks.

Financial Statements.

Trade Reference Reports.

Bank Reference Reports.

Subscribers Reports.

Travelers Reports.

Clipping Bureau Reports.

Law Bulletin Reports.

Trade Paper Reports.

Subscribers' Customers Lists.

Delinquent Reports from Subscribers.

Collection Department Reports.

Inquiries from Subscribers.

Special Information from Special Agencies.

Country Yard Lists.

Prepared Lists of Dealers and Manufacturers from Railroad Companies.

Reports from Secretaries of Retail Lumber Dealers' Associations.

Information from Subscribers' Weekly Reports.

Correspondents.

(Rec., 762-763, 819, 637, 676, 696, 468, 658.)

It might be well to state at this point the method

used by defendant in making up its book. Defendant kept in its office what is known as the office book or tickler. This consisted of the last previous edition of the defendants' book, and in it from day to day were noted changes in the names appearing in that book, and new names were being constantly added from information derived from the various sources above enumerated. The revision work commenced three months before the issuance of the book and lasted during that period. Only one-half of the United States was completely revised at each issue, so that the entire territory was revised but once a year. The changes that took place in each revision were less than 10 per cent. The revisers had placed at their disposal the revision reports, the office book or tickler and the information on file, which consisted of more than one million reports relating to the financial standing of the different lumber concerns throughout the United States (Rec., 470). They were also given the black bound book which was used as the printer's copy (Rec., 766). The black bound book or printer's copy, consisted of a manilla covered pamphlet bound with black tape, there being one black bound book for each state that was being revised. (Rec., 675.) It was a fac-simile copy of that particular state as it appeared in the reference book of the L. C. A. of the last previous edition. The pages of the last edition were cut out according to towns and pasted upon *blank sheets in the black bound book*, leaving abundance of room on each side for notes. This book contained, aside from the print of the last edition, the new names and ratings taken from the office book or tickler that had been acquired in the ordinary course of business since the last previous edition, from the sources of information above enumerated. (Rec., 675, 685.) In addition to the black bound book, the revisers

had access to the red bound book (Rec., 808-810). This book was made up mechanically the same as the black bound book, except that it was bound in red tape and except that in addition to the names and ratings contained in the printed slip cut from the last previous edition of defendant's reference book, it also contained the rating given the same names in the last previous reference book issued by Bradstreet and Dun, as well as any new names and ratings of persons engaged in the lumber and kindred trades, not given in defendant's book. All of the names and ratings placed in defendants' book were taken from original sources. Not a name or a rating was ever copied therein from the red bound book, or from the books of any other agency, either directly or indirectly.

The first thing that was done in making up the new book was to send a revision blank to someone in every town mentioned in the office book or tickler (Rec., 467, 807), for the purpose of securing information with respect to the names and financial standing of the lumber dealers in that particular town, and other information necessary for the book. (Rec., 471.) When these revision sheets were returned they were arranged according to states and towns in alphabetical order, the same as the names would appear in the regular edition. (Rec., 471.) The revisers would then take the black bound book or printer's copy of a particular state and the new revision blanks of the same state and would compare the names on the revision blanks with the names as they appeared in the black bound book, and if any changes were suggested by the revision blank they would make them in the printers' copy, black bound book, or if anything seemed to be lacking, or the information incomplete, they would examine the reports on file in the office, or write to some correspond-

ent for additional information. (Rec., 810-811, 695-697, 766-768.)

There were two uses to which the red bound book was put. If a name appeared in that book, which was not contained in the revision blanks, or in the black bound book, the reviser would write to the defendants' correspondent in that town, or to the party direct and make an inquiry regarding the concern financially and regarding the line of business. (Rec., 765, 766.)

Information in regard to the same would be sent by the correspondent or by the party direct to the defendant, and this information derived from the original source, would be placed in the black bound book, but in no instance was any name or rating from the red bound book transferred into the black bound book. (Rec., 657, 659, 679, 698, 815, 816, 641.) Every name and every rating placed in the printers' copy or black bound book was based upon information secured from correspondent or the party at the place in question.

The L. C. A. has reports giving information concerning every name and rating contained in its reference book, and each and every edition thereof, down to the present time, as was fully demonstrated when complainants called upon the defendants to produce the same with regard to certain particular names which, after the most thorough comparison of defendants' book with the complainants' by an expert, they falsely charged were copied.

The other use of the red bound book was for the purpose of comparison. In a very small number of cases, where there was a great discrepancy between the information contained on the revision blank, and the name or rating given in the black bound book, the reviser would then consult the red

bound book, which contained the ratings of the other agencies. (Rec., 766.) If the ratings in the red bound book did not corroborate the information contained in the revision blank, then the reviser would consult all the reports on file in the office. (Rec., 766-768.) If the information contained in the files was incomplete or unsatisfactory, then he would write again to the correspondent in that town, or to the party himself and make a thorough investigation as to the party's financial worth, and if he secured such information, then he would transfer the same into the printers' copy. (Rec., 768.) Nothing could be further from the facts than to suppose where a comparison was made as suggested above, that names and ratings were copied from the red bound book into the printers' copy. In fact, just the contrary is true. There are no names in defendants' book where so much original information was obtained as in those particular cases where information on the revision blank was compared with the ratings of other authorities in the red bound book. If the rater found that John Jones in the last previous edition of the defendants' book was rated at ten thousand dollars, and that the revision report gave him a normal increase or a normal decrease, then he would never refer at all to the red bound book. If, however, the revision report gave him a rating of fifty thousand, or a rating of one thousand dollars, this would be an abnormal increase or decrease, and he would think that there might be something wrong about the revision report, and then he would consult the reports on file, and the red bound books, and if he found that they did not bear out the revision report, then he would make a further investigation.

In many instances, six or seven different reports

were secured in regard to a single individual. There are over three hundred blanks introduced in evidence with respect to the seventy-three names which were alleged to be pirated. Here is an average of over four reports to a name. In no instance, however, was a name or rating inserted in defendants' book without securing information to justify it from the original source. There was not a line or a letter copied from the red bound book into the black bound book or printers' copy. This is the testimony of all the raters making the revision, except the witness Ferguson, who testifies that in some cases he copied ratings from the red bound book, where the ratings of Bradstreet and Dun therein were identical. Ferguson worked on the July, 1901, book only.

Elmer Wheaton, a witness on behalf of the defendants, testified that he worked on the revision of the July, 1901, and January, 1902, editions of the L. C. A. reference book. He describes the method of work as follows:

"I took up the first revision blank before me, compared it with the town in the printers' copy to see if any changes should be made, commencing with the first name on the revision blank, and if any changes were suggested in this blank, I made them in the printers' copy, and if anything seemed to be lacking I wrote to some source of information, generally at the town from which the blank came. (Rec., 639.)

I used the reports on file in the same manner I used the revision blanks, after I got through with the blanks. Took up the information from the various sources referred to. Sometimes I was compelled to refer to the statements which were in the office on file, but not before me with the revision blanks. (Rec., 639.) Referred to the files where

there was any question in my mind regarding the rating. I mean, regarding change in rating, or classification, that is, the line of business.

Used the red bound book simply as a suggestion. (Rec., 640.) If a name appeared in that book which I didn't have, I wrote to our correspondent, or the party direct, and made inquiry regarding the concern financially and regarding the line of business. I mean a name which I didn't have either on the revision blank, or which didn't appear in the printers' copy. Made no use of the red bound book, excepting as to classifications. Then I would write, and if there was any difference in the classification, find out whether the man was in our line of business or not. These are the only uses I made of the red bound book during this revision. Never transferred any name or rating from the red bound book into the printers' book,—not in the sense you referred to —without I had got authority from something outside of their information,—a report from the correspondent or information from the man direct. I took that name or rating generally from the information. It came into the office from our letters and correspondence,—might say from our files. Never transferred any name or rating for which I had no other information in the office. (Rec., 641.)

I also worked on the revision work of the July, 1901, edition of the L. C. A. book as a rater. That work was done just the same as the work in the previous publication. The same as the one following. Pursued the same course as I did in the one following. The one we were just talking about. Worked also as a rater on the January, 1901, edition. Did the work the same as the others. During this revision work, referred to the red book very seldom. Don't believe over a dozen times in each revision.

I think there was a change in the rating between the revisions in the work I did of probably four or five per cent. Did not ever personally refer to the red bound book except in the case of a few names during this revision work. I mentioned classifications. Never for ratings. In most every case had revision blanks for all the towns I was revising for each edition. In such cases, we wrote again for information, to various sources. To a certain extent I looked after that personally. In the territory I was doing, these different revision reports were received from correspondents from various towns where the concerns were located. Also from towns in the district where they were located. Several times I sent for revision blanks to the towns where they weren't furnished promptly after I began the work. Kept at it till the book went to press." (Rec., 642.)

Heber Fuller testified that he worked on the January, 1902, edition of the L. C. A. reference book as a rater. He said:

"The main or primary material used was a blank called the revision blank, supposed to cover a town and we had a large amount of incidental information besides, that we had sent out for. (Rec., 657.) I made memorandums during that revision in a black bound book; manilla bound book, ruled off for that purpose. It contained a copy of the previous issue of the L. C. A. book. These towns were cut out alphabetically and put in the black bound book and the changes made against those names and lists. The first thing I did was to take a revision blank covering the town I was working on, make the changes that appeared on the blank, in case there was any. Where the information on the blank didn't entirely make clear, I referred to my regular files; they contained special reports, special state-

ments that accumulated during the past year. We also had a lot of information of the same sort, gotten in connection with the revision work, personal reports and personal statements; those didn't go into the file, however, until after the revision was over with. We had what we might call incidental forms of getting information. (Rec., 658.) We had a book called the red bound book which could be referred to in case the rater thought it advisable to do so; it was simply an optional matter, as I understood it. Of course, I don't know what everybody understood by it. The red bound book contained one of our printed lists taken from the last issue of our book with other ratings or names attached or connected with them. I referred to the red bound book very little; referred to it principally in the matter of sometimes spelling a name; that is as far as I ever recollect I ever referred to it. I never transferred or copied any name or rating from that book to our printers' copy.

In cases where the information contained on the revision reports was incomplete or unsatisfactory I made a further investigation in various ways, it depended altogether upon the case. If there was a case where our previous rating had shown a man worth $5,000 and the revision blank showed a heavy increase, something like $25,000 to $30,000, I would investigate to know how it came about. (Rec., 659.) Where our previous rating had been too low, or where the man had made money in the meantime justifying that increase; I made the investigation commonly by letter to the correspondent in the town, also by a personal statement blank; in similar cases I would refer to the file. I would go to the file first, and if it didn't have anything that would throw light on the matter, I would write.

In cases where I had no revision blank from a town a postal card was used most often; that was the course; towns like that were not very frequent because they sent us revision blanks and wrote the correspondent until they got something in on them. Don't recall very many cases where that feature obtained. In making these changes in ratings I acted upon the information before me that had been obtained for that purpose by our investigation through our correspondents and various sources of information. I made no change in rating where I had no revision blank or other original source of information before me.

It is pretty hard to say what was the proportion of changes in the rating during this revision. It differs in different parts of the country. In saw mill sections, or newer sections, changes are more numerous than in the settled sections. I should say a fair average would be something like three or four or five per cent.; that is only a guess; never figured it out. (Rec., 660.)

I simply referred to the red bound book in my revision in the way of spelling differences; the names would be a little bit twisted around, printers' mistakes, one thing and another. I referred to it in that event."

A. L. Knefler testified that he worked upon the revision of the January, 1902, edition of the L. C. A. reference books, and said:

"I took up this work state by state. I first considered the revision blank taking the first name, comparing it with that in the printers' copy alphabetically, and if the information contained on the new revision blank just received from the correspondent corroborated the rating that we had in print, it was allowed to stand. (Rec., 676.) Where

the correspondent on the last revision blank furnished information indicating a normal increase in the rating, this was given without question; we assigned the rating based on the new information. Where the information furnished by the correspondent in this last revision blank was very much at variance with the rating in print, I called for all the data in the office in an attempt to verify this, or otherwise. This data consisted of personal statements in many cases, detailed reports, that is, reports furnished by people in the trade voluntarily, law records, bank reference or bank information, information that we received regularly from secretaries of lumber associations, newspaper clippings, our travelers' reports, city reports, information received through the collection department, information received on delinquent reports and a number of other sources. Trade references, trade journals, I suppose that was included in newspaper clippings, subscribers' weekly reports, railroad lists; the railroad people furnished a list of saw mill and lumber manufacturers, lumber dealers on their roads, that we use, country yard lists, this is a paper blank sent to subscribers and to the trade that run a number of yards throughout the country (Rec., 677); they fill out the names of the towns and the gazetteer matter. We have an arrangement with special agencies by which they furnish us with reports; they are located in the large cities. A good deal of information is obtained from the ticket of inquiry sent in by subscribers also blanks sent to subscribers, asking for the list of their customers; in that way we get many names and some data. These different sources of information were carefully gone over to see if there was anything that would in any manner corroborate this late information furnished by our correspondent. Where information was found

on the records we already had, corroborating this later information, I assigned the rating based on the new information; in other cases where I could find no data of any kind, to confirm this later information, I investigated it, that is, where the information was very discrepant, by sending out a statement blank to the party reported upon, or writing to the correspondent who furnished the information, calling attention to the discrepancy and asking if it was an error; I then had the red bound book handy. (Rec., 678.) That book was made up mechanically in the same manner that the black bound book was, except that it was bound in red instead of black. It contained, in addition to the printed part of the last previous edition of the reference book, names that had been obtained from other sources, together with key ratings; new towns that had been obtained from other sources. In doing this revision work, I made use of the red bound book for an occasional comparison. Where the information given on the revision blank by the correspondent was very much at variance with the rating that had been previously assigned him in the book of the L. C. A. in July, 1901; where I had exhausted every resource of the office and found no information to corroborate or bear out this latter information, I compared the information with that indicated by the rating in the red bound book. This occurred very few times, comparatively speaking. If the comparison was favorable to the information I had received, I assigned a rating based on the information received from our correspondent. I did not put any new name in the printers' copy with or without a rating, that did not have original information of some character before me upon which to base it. (Rec., 679.) Did not transfer or copy any name or rating from the red bound book to the printers' copy. I had, in each

instance, in which a change of rating or a new name and rating was made by me in the printers' copy, original information in my possession upon which to base it. There were few names and ratings in the printers' copy, which I did not make or put in there myself. I compared such new names and ratings with the revision blank; did not compare them with anything else; oh, yes, the office tickler and the supplement. (Rec., 680.) I found from that comparison that they agreed. I worked on the revision of this January, 1902, edition from November 1, 1901, to the time the book was issued, shortly after the first of January, 1902. General changes were made in this edition up to about December 25th, special changes up to the time the book was ready for binding."

Philip C. Howard testified that he worked on the revision of January, 1902, edition of the defendants' reference book, and said:

"What was known as the red bound book was at hand to refer to when in our judgment we thought it advisable; merely as a check, or to corroborate the information at hand. I made no use of this book except for the purpose of reference or as a comparison. (Rec., 697.) Where there was a wide variance in the estimate with the report of the correspondent and the rating we had, what might have been known as the present, or the rating that we previously assigned to the firm or dealer in question; if the rating in the red bound book confirmed this information of the correspondent, I made immediate use of the correspondent's rating, assigning such rating on the printers' copy. Where it negatived this information I followed the course previously mentioned, *i. e.*, I wrote to the dealer for a financial statement, and consulted other correspondence sources. (Rec., 698.)

These are the only uses I made of the red bound book. I did not in any instance, transfer or copy any name or rating from the red bound book to the printers' copy. The change I made in the printers' copy in that portion of the revision work I did, was based on original information from the correspondents and the dealer himself.

It is rather hard to estimate definitely what per cent. of changes in ratings was made, but I should judge not more than 5 or 10 per cent. at the outside." (Rec., 698.)

William Claney, President of the Lumbermen's Credit Association, said:

"The use made of the red bound book is that we take new names from the same and send them to our correspondents for financial reports as to their worth and general standing. (Rec., 765.) These red bound books are sometimes used by the raters for comparison in cases where the information received on the revision blank indicated a very much higher net worth than the rating in our last published book (Rec., 766); the raters would compare the information furnished by our correspondent with the ratings that they might find in the red book. (Rec., 767.) In case there was a great difference in the ratings in the red book and the information contained in our revision report, they would first go to the records or files in the office to ascertain if we had any previous information received which would corroborate the correspondents' report and in a great many cases they would find in the files the corroboration of the higher information which had been overlooked in the work during the year, and then they would assign a rating as based on the report received from the correspondents. And in the event that they did not find in the rec-

ords such information as would substantiate the report made by the correspondents, they would then send for information, either by asking for a personal statement from the party, or sending to the correspondent again to verify his report, or some other source of information to substantiate his statement. The rule of the office is to seek substantiation of the rating from our old sources of information or the new information. (Rec., 768.)

Burton W. Stadden, Secretary of the Lumbermen's Credit Association, testified:

The raters themselves made no use of the red bound book whatever except for the purpose of comparison where the new revision reports would show an abnormal change in rating as compared with the last reference book of the L. C. A. (Rec., 811.) There were not to my knowledge any new names or ratings copied from the red bound book to the printers' copy by any of the raters. I instructed them under no circumstances to take any names or ratings from the red bound book. In fact, the raters work from the revision blanks constantly; have never worked from the red bound book. I made use of it as I have heretofore stated for the purpose of comparison; did not make any other use of it in connection with them. It was used principally for the purpose of finding new names, and those new names were investigated and in many cases we found that where Dun and Bradstreet reported parties engaged in the lumber business, they were carpenters, builders, wagon makers, blacksmiths, and in lines our book does not cover, and their names were of no use to us. If we found they were in our line of business we obtained a report on them and rated if they were entitled to a rating according to the reports received from our corre-

spondents. (Rec., 812.) The new names were placed on our revision blanks and the blanks forwarded to the correspondent with a request that he make a report as to the line of business and with reference to their financial standing, and in some cases what we call our special report blank was sent and special investigation made. The raters were instructed to continue their efforts to obtain the information until they got it; where none had been received up to the time they were doing the work on that town, by either obtaining it through our correspondent, or through banks, or through a member of the trade, by application for a personal statement, or by any means they saw fit, so they could get the information direct. I know that they did this. Followed right up to the time the forms were locked up to be printed. The pages were put in forms, so many pages in each form, locked them up and printed them on the press. The effort was continued and if the information came in after the pages had been printed, that particular page the information was then used in the supplement, which in many cases goes with the book. Changes were made in the book, right up to the time the press was ready to print the form. (Rec., 813.) The press work usually continues a trifle less than two weeks, so that some of those pages would be printed a little earlier than others. In the revision work I should say I did not refer to the red bound book more than one name in a hundred."

Every witness who testified in the case in reference to the red bound book stated that the only use that was made of the same was as a guide to original sources, and for comparison, except William E. Ferguson. He was the main witness of complainants, and we wish to call the court's atten-

tion to some particular portions of his testimony It must be borne in mind by the court that Mr. Ferguson did not work on the January, 1902, edition of the defendants' book which was sought to be enjoined by this bill. He merely worked on the July, 1901, edition, and after that edition was prepared he left the employ of defendants. Some time afterwards he entered the employ of the Foster Lumber Mercantile Agency, in which capacity he was serving at the time his testimony was taken in this case. The bias of the witness is readily shown by the fact that the Foster Lumber Mercantile Agency, a rival of this defendant, was the instigator of this entire proceeding. Even in his direct testimony Mr. Ferguson does not testify that he copied a Dun rating from the red bound book into the printers' copy. He merely states that in certain cases he adopted a rating half way between Bradstreet's and Dun's, and in others he took the same rating as Dun and Bradstreet's where Dun and Bradstreet's coincided. His testimony is a vague generality. In not one instance is he particular. He could not name a single instance where a Dun rating was taken from the red bound book and copied into the printers' copy.

Following is a portion of his testimony which shows how vague Mr. Ferguson was and also indicates the bias of the witness (Rec., 412):

Cross-Examination by Mr. Prase.

"Q. Well, now, I mean aside from the red book entirely. Did you not have sources of information, some of these other sources of information aside from the red book on every town shown in this July, 1901, edition of the reference book published by the defendant, in these states? A. I don't remember.

Q. You don't remember? A. No, sir.

Q. Do you remember that you did not have? A. I couldn't—

Q. Wait a minute. That you did not have some of these sources of information as to every town in these states for that revision? A. What sources of information do you refer to?

Q. The ones which we have enumerated, aside from the red bound book? A. I couldn't specify any particular case.

Q. Well, I'm asking you; that isn't an answer to my question. A. If I would answer that is true, the next question you will spring will be, what case?

Q. How do you know? A. Well, because I know you will.

Mr. O'Connor: Mr. Witness, answer the questions that are put to you.

Q. You are not a mind reader, are you? A. That is all right. Mind reader enough for that.

Q. Well, we will go one step at a time, and one question at a time. A. I can't remember any particular case."

On cross-examination Mr. Ferguson did not remember whether there was a single town in the states which he revised where he did not have sources of information other than the red bound book. Mr. Ferguson testified that he spent three months on this revision work and revised 186 pages. If he had been merely copying ratings out of the red bound book he could have done this work easily in three days. If he was merely copying names and ratings from the Dun book, he certainly could have mentioned a few names and ratings which he

copied. He knew if he gave any names appellees could produce the original information on these names, the same as they did on the seventy-three names selected by complainants. Why did he spend three months? This question is answered in other portions of Mr. Ferguson's testimony. He states that he used many original sources of information. He said (Rec., 408): "The sources of information were such blanks as we received in the office; such postal cards as reached the office; the red book (not the red bound book) and reports on file. The regular revision blanks which are sent out by the company, and other blanks that they use for that purpose, the blanks that the lumbermen are in the habit of sending out, regular information blanks, to subscribers, such blanks as are sent to local correspondents, postal cards which they send out, asking for the names of lumber dealers in their town, and personal statements which are a part of the regular blanks sent out from the office; local correspondent blanks; reports from banks and trade references and tracers (Rec., 409). Undoubtedly we had reports from the collection department on file. We had numerous newspaper clippings from different newspaper clipping bureaus. I remember a canvass covered book in which are made notations of changes from day to day through the year, referred to sometimes as THE OFFICE TICKLER. I do not remember, yet I may have worked on such a book though. I referred to and used what is known as the monthly supplement. The office files included such information as we had previously on record upon firms throughout the United States. (Rec., 410.) There was a considerable volume of the revision sheets, the reports of the local correspondents, personal statements, tracers, reports from the

collection department, files, clippings, monthly supplement, which I handled on this revision work, covering those states which I have testified to. Substantially all of my time was occupied in examining these records and reports. (Rec., 412.)

Mr. Ferguson was the only new rater who worked on the July, 1901, edition. All of his work was thoroughly revised by Mr. Stadden. (Rec., 836.) Mr. Stadden found that Mr. Ferguson was not, in every case, basing the ratings upon reports, and so he took the pains to go over Mr. Ferguson's entire work and see that names and ratings placed on the printer's copy were based upon reports received from correspondents. (Rec., 837.) Mr. Stadden said that he went over every name that Mr. Ferguson had handled. This testimony is uncontroverted and shows the very careful manner in which appellees' did their work.

Mr. Ferguson did not remain with defendant after this revision.

Counsel for appellants also call attention to Mr. Wright's affidavit. This was an affidavit filed on the motion for a restraining order before any testimony was taken in the cause, and we would like to inquire by what rule of evidence it can be made competent in this cause. Counsel for defendants objected to this affidavit when it was offered in evidence. (Rec., 793.) The only testimony at all in regard to this affidavit is on page 791 of the record, where Mr. Clancy says that Mr. Wright stated to him that he had made a mistake and had been deceived by the Foster Agency in the making of an affidavit which was filed in this cause; and that the names which were used in the case were the names which Mr. Fish used as a canvassing document against the L.

C. A.; that he had found he was among a lot of people that he did not care to be associated with; that he was very sorry for the statement he had made. Complainants had the opportunity of calling Mr. Wright and taking his testimony. This they did not do, and we are surprised that, under the circumstances, counsel of such ability should devote two pages of their brief to an affidavit, and consider this as competent evidence in the cause. The only explanation is the lack of sufficient competent evidence with which to substantiate their contention. Both of the courts below sustained the objection to this affidavit.

The contention of counsel that the red bound book itself is an infringement can not be treated seriously. Under the authorities cited we had a right to use it as a suggestion as to sources of information and for purposes of comparison. The red bound book could not be an infringement unless before publishing our book we failed to secure original data on which to base our information in a material number of instances. Furthermore, the red bound book is only an item of evidence and the bill does not seek to enjoin it.

It is charged by counsel in various parts of their brief that the Dun book was obtained by the defendants in a surreptitious manner, and that defendants have at all times endeavored to hide and conceal the use that was made of the red bound book. This is not true. The evidence on the contrary is that the book was obtained from a regular subscriber to the Dun book, who was conducting a circularizing agency, and who worked for Dun & Co. (Rec., 435, 440.) This circularizing agency transferred the new names and ratings from Bradstreets and other agencies as well as Dun into

the red bound book. Thorbus was engaged in this line of work and had better facilities for doing it than the Lumbermen's Credit Association. If the Lumbermen's Credit Association chose to have this work done by a regular subscriber to the Dun book who was engaged in a circularizing business, and who had better facilities for preparing the red bound book than it, and could do the work much cheaper, how does this indicate secrecy? If the Lumbermen's Credit Association wished to obtain the book in a secret manner, it would not have employed a man who was also in the employ of Dun & Co. (Rec., 440.) Furthermore, the evidence shows that the majority of the raters employed by the Lumbermen's Credit Association are men who have worked also for Bradstreet and Dun. These men circulated in their employment back and forth among the various mercantile agencies and were apt at any time to go back into the employment of Dun & Co.

If Mr. Clancy or Mr. Stalden desired to preserve secrecy as to the contents of the red bound books or it was their desire to have them used for an unlawful purpose, they certainly would not have placed them at the disposition of these raters. Appellees secured this information in the only way obtainable, as the Dun book was not on general sale in the market like other copyrighted books. The charge of appellants is all the more absurd when it is considered that appellants surreptitiously obtained possession of appellees' books offered in evidence in this case. Appellants also hired detectives and secured appellees' proof sheets on the January, 1902, edition by secret methods. Counsel are wrong, as we have heretofore pointed out, in their statement that the use of the red bound book was at any time concealed. Appellees in the first paper filed in the case—the affidavit

of Burton W. Stadden—(Rec., 91) informed the court as to the use of the red bound book. These were produced by appellees before the master thirteen days after the filing of the bill. There was no attempt on Mr. Clancy's part to conceal the entire use which the Lumbermen's Credit Association made of the red bound book, as is shown by reading his entire testimony. The only reluctance exhibited by Mr. Clancy in his answers before the master were in instances where the inquiries were impertinent or involved. Mr. Clancy did not conceal the use that he made of the red bound book. He stated that it was obtained from a subscriber, but did not wish to tell who the subscriber was, because he did not care to drag a th d party into the controversy. He was willing to make a full disclosure as to his connection with the transaction. He said that the red bound book, containing names and ratings from Bradstreets, Dun and other agencies, was used for purposes of comparison in certain instances and in other instances to direct the Lumbermen's Credit Association to original sources. The question as to the name of the particular subscriber from whom the book was obtained was entirely immaterial. If there was any question which Mr. Clancy refused to answer that was proper counsel had an adequate remedy to compel him to answer. There is no question which the court held was proper that Mr. Clancy did not answer fully and completely.

Counsel for appellants have endeavored to create the impression that the revision sheets sent out by appellees contained the names and ratings of Dun & Co. They contend that ratings corresponding with the Dun ratings were placed on the revision blanks before they were sent to the correspondent, and were then returned by the correspondent, with

the information which came originally from Dun's book.

This is a mere claim which is not supported by the evidence. Nothing is further from the truth. There is no testimony whatever which shows that a single rating, taken from the Dun book, was placed on a revision blank before being sent to a correspondent. The only testimony to which counsel directs the court's attention is that of William Claney, which was taken, not on the regular hearing, but on the motion for preliminary injunction. Counsel merely quote extracts which are meaningless without quoting Mr. Claney's entire testimony, taken both on the hearing for preliminary injunction, where there was no cross-examination by appellees, and also on the regular hearing.

Mr. Claney does not say that a single rating on a revision blank was taken from or was in any way related to the Dun rating. Counsel for appellees endeavored to have counsel for appellants (who were conducting the examination) question the witness as to whether any ratings were placed upon the revision blanks which were in any way based upon Dun & Co.'s ratings in the Red Bound Book. Counsel for appellants studiously avoided putting any question of this kind. (Rec., 356-357.) What Mr. Claney said was that it might be POSSIBLE in some instances that the rating on the revision sheets have reference to the ratings of the other agencies as shown by the Red Bound Book. This testimony of Mr. Claney does not in any way bear out the contention of counsel for appellants, because:

First: Mr. Claney was testifying as to a possibility. Mr. Claney was the president of the Lumbermen's Credit Association, and had only a general

knowledge of the business. He did not perform the detail work. He had not had time to investigate every detail of his vast business at the time of giving his testimony, which was a few days after the filing of the bill, and could testify in no other way than that it might be possible in some instance without the range of his knowledge for a rating to be placed on a revision blank by some agent, which was based on the rating of some other agency. He does not say, however, that this ever occurred, of his own knowledge, but, on the contrary, states *that he does not know personally*, that the letters and ratings opposite the names in some cases have reference to the ratings given to those names in reference books of other agencies. (Rec., 358.)

Counsel, in quoting from the testimony of Mr. Clancy, have omitted that part of the testimony on page 358, as well as other portions of the testimony, in which he says that *he had no personal knowledge*.

Second: Even though Mr. Clancy had testified that of his own knowledge he knew that names and ratings based upon ratings of other agencies in the Red Bound Book were placed upon revision sheets before being sent to correspondents, still this would not justify appellants in charging that these names and ratings were the ratings of Dun & Co. Counsel for appellees endeavored to have appellants confined in their questions to the Dun ratings (Rec., 358), but counsel for appellants did not dare put the question in this way. The Red Bound Book contained the ratings of other agencies, namely, Bradstreet, Lyon, Ely and Cozad. Counsel did not show that in any instance the Dun rating was taken or used in any manner.

Third: The testimony of Mr. Clancy was given

on motion of appellants for a preliminary injunction when he was called by appellants as their witness. Counsel for appellants voluntarily withdrew this motion for a preliminary injunction, and Mr. Clancy was never cross-examined. The lack of importance which appellants attached to Mr. Clancy's testimony as affecting the proof of their case is shown by their voluntary withdrawal of their motion for preliminary injunction.

Fourth: Although seven of appellees' raters testified on the regular hearing, counsel for appellants did not show by any witness that a single rating from the Red Bound Book based on the ratings of other agencies was placed on a revision sheet before being sent to a correspondent. If this were the custom of appellees, counsel for appellants would surely have asked some question pertaining to it. This they did not do. Nor did they examine Mr. Ferguson, their own witness, who was hostile to appellees, in reference to this matter.

Fifth: An examination of the 316 reports offered in evidence will show that there are scarcely twenty reports in the entire number where new names have been inserted with capital ratings before being sent to the correspondent. There is absolutely no evidence to show that any of them were taken from the Red Bound Book or the Dun book. On the contrary, the evidence is (see Rec., pp. 467, 830) in such instances the rating came from the defendants' office tickler. This office tickler, which was a memorandum book in which information as to names and ratings was noted, contained information received from the various sources heretofore enumerated. This information was not taken from the Dun book, and had nothing whatever to do with it, either directly or indirectly.

Sixth: The absurdity of counsel's contention is shown by the other testimony in the case. Instead of being a mere servile imitation of the Dun book, the Lumbermen's Credit Association reference book is more complete in every respect as to the lumber trade than the Dun book. This is further shown by the testimony of a large number of the most prominent lumbermen and other business men in the City of Chicago, who have been subscribers to both books for a number of years. They have had practical experience with the book, and their testimony on this point is very important as to appellees' book, which has been published now for more than thirty years. It is shown by an inspection of defendant's exhibits 140 and 141, in which a comparison is made of the two books. It is shown by the vast volume of original information produced as to the names picked by experts. It is shown by the table appearing in the foregoing statement of uncontroverted facts, displaying the difference in the two books in reference to the seventy-three names claimed to have been pirated. It is shown by Stein's and Tuttle's comparison of alleged similar ratings in the two books. It is shown by the personal statements of the Shaw Lumber Company, W. E. Lyons & Company, Mackemer & Carlin and Atlanta Basket & Veneer Company, heretofore referred to, which indicate the thoroughness of appellees' system as compared with the inaccuracies of the system of appellants. It is clearly shown by an inspection of the names, in reference to which depositions were taken. Had appellees been blindly copying from appellants, the name of L. F. Goree would not have appeared in appellant's book in its various editions for five years before it appeared in appellees' book. The name of Frank Ratthle & Co. would not have appeared in four of ap-

pellants' books before it appeared in appellees' book. The name of W. E. Brown would not have appeared in the various editions of Dun & Co.'s book for four years before it appeared in appellees' book. The name of Phillips & Mittenzwey, Sawmill & Lumber Co. of Pittsburg, Pa., would not have appeared in Dun's book six years before it appeared in appellees' book. The name of Heinbaugh & Shriner of Lake, Ohio, would not have appeared in appellants' book two years before it appeared in appellees' book. If appellees were engaged in the business of copying from appellants, they would have transferred new names into their book at least within six months after they appeared in appellants' book. There are many other examples among the seventy three names which might be cited. We refer to the above because counsel for appellant went to the trouble and expense of taking depositions in reference to these names at various points in the United States, and because these are among the names called in question by appellant.

Analyzing the testimony of appellants, it is clear and conclusive that appellees' so-called system was not to use the red bound book for any except legitimate purposes, and that names and ratings were not placed in appellees' book unless information was properly obtained from original sources.

After a careful consideration of all the testimony in the case with reference to the red bound book, considerable extracts of which we have above set forth, we confidently submit that the evidence conclusively shows that the names and ratings in defendants' books were based on original information; that this information was of the most authentic character that was possible to be obtained, and that the

only use made of the red bound book, besides serving as a guide to direct defendants to original sources, was as a means of comparison, which occurred in about one per cent. of the names contained in the book. This was a legitimate use and one appellees were authorized to make under the law.

VI.

THE DUN BOOK IS NOT WITHIN THE PROTECTION OF THE COPYRIGHT LAW.

The power of Congress to legislate in regard to copyrights, is derived from the following provision of the Constitution:

> "Art. I, Sec. 8: The Congress shall have power * * *
>
> Eighth: To promote the progress of *science and useful arts* by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries."

The first English statute was the statute of 8 Anne, Chap. 19. It provided for a much more extensive copyright.

Section 1 was as follows:

> "That from and after the tenth day of April, 1710, the author of any book or books already printed * * * shall have the sole right and liberty of printing such book or books for the term of one and twenty years to commence from said tenth day of April and no longer, and that the author of any book or books already composed and not printed and published, or that shall hereafter be composed, and his assignee, or assigns, shall have the sole liberty of printing and reprinting such book and books for the term of fourteen years, to commence from the date of the first publishing the same and no longer."

Section 4 provided that if any bookseller or printer should set a price upon, or sell or expose for sale any book or books at such a price or rate as should be conceived by any person or persons to be too high and unreasonable, it should be lawful for any person or persons to make complaint thereof to the Archbishop of Canterbury, or certain other judicial officers, to inquire into the reason of the dearness and enhancement of the price of such book or books, and it authorized such officers to limit and settle the price of such book or books. It imposed a penalty of £5 for each book or books exposed for sale at a higher price than the prices fixed.

The English Parliament possesses universal and absolute power on any subject upon which it legislates, and the construction upon Acts of Parliament is very liberal and not restrictive in any sense. By this statute, which was in force at the time of the adoption of our Constitution, the English Parliament had assumed to legislate fully on the subject of copyright of books. If it had been intended by the Constitution to give Congress universal, absolute and unrestricted power in regard to protecting every kind of book by copyright, the convention would certainly have used broader and more general language than that contained in the provision above quoted. It would not have put in the clause "to promote the progress of science and useful arts." It is clear from this section that it was not intended to give Congress the right to protect by copyright any authors or inventors whose works did not promote the progress of science and useful arts. The protection of a purely commercial work was not thought of. The first Act of Congress on this subject provided what should be the subject of copyright in the following language:

> "Any citizen of the United States or resident therein who shall be the author, inventor, designer, or proprietor of any book, map, chart, dramatic or musical composition, engraving, cut, print or photograph or negative thereof, or of a painting, drawing, chromo, statue, statuary, and of models or designs intended to be perfected as works of the fine arts, and the executors, administrators or assigns of any such person shall, upon complying with the provisions of this chapter, have the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing and vending the same; and in the case of a dramatic composition, of publicly performing or representing it, or causing it to be performed or represented by others. And authors may reserve the right to dramatize or to translate their own works."

The act of March 3, 1891, does not materially change this language.

It may be contended that the language of these sections is broad enough to include directories, gazetteers and works of a purely commercial value. It must, however, be borne in mind that if these provisions of the statute are broader than the power conferred in the Constitution, they are limited by that instrument.

We may ask, what science is promoted by the book of Dun & Co. or by any item of information therein contained? The fact that Jones is a merchant, that he lives in a certain town, that he is worth so much money, and that his credit is good is certainly a matter that is of no interest to science, nor can such fact, in any degree, tend to promote it. Neither can it be said to relate to any useful art. A useful art is certainly one that would be of permanent benefit to mankind.

It seems to us that we need no stronger argument on this subject than is contained on pp. 61 and 62 of appellant's brief, which is as follows:

"The books in question are not literary productions nor historical or scientific in their character, but are prepared and published for a purely commercial purpose. They are limited in circulation, confidential in character and expressly restricted by contract with the subscriber to his individual use. Their value is temporary only. The information they contain must be recent and disclose the present standing of the persons they report, therefore, those cases that permit a liberal use of the copyrighted work for the advancement of learning or the development of science have no application to the books in question."

"Posterity is not interested in these books. Appellees were not engaged in the laudable task of gathering together useful information to be handed down to the next generation, nor in the evolution of the science of law or government, but simply in the production of food for immediate uses, as much so as the baker who to-day bakes bread to be consumed to-morrow. Appellees cannot, therefore, invoke in their defense a rule evolved from a broad and liberal public policy of encouragement of the arts and sciences.

"Appellees were inspired by no higher motive in the production of their books than the profits they expected to derive therefrom, and the fact that appellants were moved by the same power in the publication of their works does not affect the question. Their books were valuable property, the result of their time, money and labor, and the appellees had no right to appropriate that property or any part of it to their own money-making enterprise. In this case the lines should be tightly drawn as to what was a fair use. There is no reason for a relaxation of them. No interest of the public or any question of public policy demands a liberal interpretation of them. *Nothing is involved but property rights and money value.*"

Again appellants say on page 34 of their brief:

"There was no implied consent by appellants that appellees should use their books; on the

> contrary, their use was expressly limited to subscribers by written contracts. *Appellees did not use them to advance or develop any useful art or science.* The purpose was simply and entirely commercial."

Do we need any stronger argument than that made by counsel as above quoted, to convince the court that the Dun book is not within the copyright law? To be sure, the argument above made is made by counsel for a very different purpose. They say that the public are not interested in the Dun book. This, however, was not in the minds of the framers of the constitution at the time that instrument was prepared. They believed that the public as well as individuals were interested, and they only consented to the creation of a monopoly in favor of authors and inventors on the ground that the public would be more benefited by the promotion of useful arts and science, than harmed by the introduction of a monopoly, which was entirely foreign to our institutions.

The monopoly in favor of authors and inventors appears to have been suggested by an exception in the statute prohibiting monopolies.

> 21 Jac., 1, c. 3.
>
> II Blackstone's Com., 407.

James Madison, in the Federalist of January 25, 1788, page 338, after quoting paragraph 8, Sec. 8, Art. I of the Constitution, says:

> "The utility of this power will scarcely be questioned. The copyright of authors has been solemnly adjudged, in Great Britain, to be a right at common law. The right to useful inventions seems with equal reason to belong to inventors. The public good fully coincides in both cases with the claims of individuals. The states cannot separately make effectual provision for either of the cases," etc.

Thus it is seen that in the mind of Madison, as well as other framers of the Constitution, the public good was the main thing to be subserved, and the argument of counsel above quoted is that there is no public good in the publication of the fact that a man lives in a certain town, that he is worth so much money and is entitled to such and such credit.

In some cases in inferior courts it seems to have been assumed without question that mere directories, sheets or pamphlets, no matter what their purpose was, and no matter what the object was in their publication, were within the operation of the copyright law. We suggest, however, to the court that in none of these cases has the question ever been presented of whether all or any of these matters were beyond the power of Congress under the Constitution, to protect. In none of them did the question of Congress creating a commercial monopoly of something which was entirely without the object and purpose of the Constitution, come up for the consideration of the court. It certainly is not discussed in any of the opinions, and it is reasonable to infer that it was never argued before the court in any of these cases. This court has never passed upon this proposition, and it is, therefore, before it as a new question.

Counsel makes the argument above quoted, to show that in a work which is clearly within the protection of the Constitution, and the Acts of Congress under it, like a literary work, a work promotive of science or useful arts, a subsequent author has a right to make a reasonable use of the copyrighted work, but they insist that in this kind of a commercial monopolistic copyright for which they contend, a subsequent compiler or seeker for information has no right to make any use whatever of the information contained in the Dun book. Can it be possible

that counsel really believe that this court will give to Dun & Co. a benefit of the copyright laws, which is so much superior to that of any author who is producing something tending to promote science and the useful arts.

We believe that these considerations entirely escaped the Court of Appeals in the decision in *Sampson & Murdock Co.* v. *Seaver-Radford Co.*, 140 Fed., 539. Under the Constitution Congress can only pass a copyright law that will "promote the progress of science and useful arts." Appellants admit and positively assert (as will be observed by examining the quotations from their brief above set forth) that the Dun book does not advance the sciences or useful arts. How, then, can the book be copyrightable?

It may be claimed that the decisions of the courts inferior to this, enforcing copyrights of a kindred character to this, have established a rule of property; that a decision by this court that such publications were not within the protection of the copyright laws would unsettle these supposed property rights and privileges which different parties have enjoyed. When it is considered, however, that the principle for which we contend applies only to works that are of a temporary character, and whose usefulness is confined to a few weeks, or months at most, it can readily be seen that a decision by this court would not affect any vested property interests. If, as said by counsel, it is like bread of the baker, which is baked to day to be consumed to-morrow, there certainly is no permanent vested property right that can be affected by a decision of this court, holding that publications of this character are not within the copyright law.

The Dun book is not within the protection of the copyright law for another reason.

The whole purpose of the copyright law from the time of the statute of Anne until the present has been to protect the author or proprietor of any book in the sale of the same. According to Section 4 of the statute of Anne, if a person fixed an unreasonably high price on his book, application could be made to the Archbishop of Canterbury or certain judges to fix and determine the reasonableness of the price; and if, after the fixing of such price, a sum in excess of the price were asked for the book the party so asking it was subject to a penalty of £5.

Dun & Co. do not sell their book. They only lease it. The protection of the copyright law does not extend to the leasing of a book. Dun & Co. do not rely upon the protection of the copyright law. They rely upon their contract with the subscriber to return the book. Their contract with the subscriber does not give him any property interest whatever in the book, and the physical property rights and ownership of the book remain in Dun & Co.

We submit that Dun & Co., by refusing to vend or sell their book at a reasonable price take a very inequitable position—that they violate the spirit of the copyright law—and do not come into a court of equity with clean hands or bring themselves within the protection of the copyright law.

The language of the statute is:

> "The author, inventor, designer or proprietor of any book, map, chart, dramatic or musical composition, engraving, cut, print, or photograph or negative thereof, or of a painting, drawing, chromo, statue, statuary and models or designs intended to be perfected as works of the fine arts, and the executors, administrators or assigns of any such person shall, upon complying with the provisions of this chapter, have the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing and vending the same."

The terms "vending the same" are to be construed as supplemental to printing or reprinting or publishing a book, to executing or finishing an engraving or photograph, etc. The purpose of the statute is to protect the author or proprietor when the book shall have been sold, and the book itself gone beyond his control. Unless he sells the book and disposes of the same, it cannot be within the protection of the copyright.

We therefore submit that the Dun book is not within the protection of the copyright law.

VII.

THIS SUIT WAS NOT INSTITUTED IN GOOD FAITH, BUT WAS INSTIGATED BY THE FOSTER LUMBER MERCANTILE AGENCY, A RIVAL COMPETITOR OF THE LUMBERMEN'S CREDIT ASSOCIATION, FOR THE PURPOSE OF INJURING THE BUSINESS OF THE LATTER AND LEARNING ITS METHODS OF WORK.

Appellants have attacked the good faith of appellees in the preparation of its book and the conduct of its defense. We wish to analyze these charges in detail, and also throw a searchlight upon the methods and motives of appellants.

Appellants charge appellees with lack of good faith in not transferring all the information in their office to the master's office for the curious inspection, entertainment and education of appellants and the Foster Lumber Mercantile Agency. Under a well established principle of law, appellants could not have compelled us to produce a single document. (See cases hereinafter cited.)

However, we voluntarily produced over 300 documents containing information in regard to seventy-

three names. When we produced the same, appellants' counsel brought an employe of the Foster Agency into court to examine the documents. (Rec., 347.) Notwithstanding the fact that Dun & Co. have hundreds of employes who are supposed to be experts in these matters, they bring in an employe of the concern which was an immediate, but unsuccessful rival of appellees, and which had been trying for years to learn appellees' methods of conducting its business. Our reasons for not producing additional documents are fully set forth on pp. 385-6-7 of the record, among which are the following:

First, because the subpoena served upon the witness is too vague and indefinite, in that it does not particularly describe any of the papers called for, or state the contents thereof.

Third, because there is no showing that there are any such papers in existence, or in the possession or under the control of the witness or the Lumbermen's Credit Association; on the contrary, it appears from the sworn bill of complaint and the affidavits filed in this case on behalf of the complainants, that there are no such papers in existence or in the possession or under the control of the witness or the Lumbermen's Credit Association.

Fourth, because the complainants have not pointed out the specific names and ratings which it is claimed the defendants copied, which can and should be done by comparison of the two books in question.

Sixth. The reference book published by the Lumbermen's Credit Association contains upwards of 60,000 names, in compiling which many original sources of information have been used. Some of the information is upwards of twenty-six years old. To properly show the basis of ratings appearing in

the January, 1902, edition of the reference book issued by said association, it would in many instances require the examination of a very large number of documents as to each name. That to produce the documents on which the ratings are based as to all of the names contained in said reference book would require an examination of over one million papers. That to fully present the honesty and good faith with which the defendants have compiled the ratings contained in said reference book, it would require the introduction, item by item, of all the documents relating to all of the names in said book.

Eighth. That without the specifications by complainants as to the particular papers which they desire, and that the same have some bearing upon the question before the court, and as to the contents of such papers, and as to what they expect to prove thereby, and without some limit as to the scope of the examination, the present inquiry amounts to a mere matter of discovery of the private information of the Lumbermen's Credit Association, which has been compiled at great expense by said Association, the most of which has been received by said Association under a pledge of confidence; and the publishing of which information is in violation of such confidence, and impairs the ability of said Association to secure information in the future, and which information is, as we are informed and believe, designed to benefit the Foster Lumber Mercantile Agency rather than the complainants in this cause.

Ninth. That the miscellaneous examination of data regarding names in the reference book published by said Association causes great inconvenience in searching therefor through the files and pa-

pers, and interferes greatly with the business of said Association, and results in great loss and damage to the business of said Association, and has become and is oppressive. That the complainant, as to the names contained in the list attached to the affidavit of Stanley T. Prudence, has in the examination before the master utterly failed to sustain any allegation of the bill of complaint; that on the contrary the complete and absolute good faith of the defendants has been shown; that the calling for information as to the other names is outside of the scope of the reference, and if persisted in and permitted will result in great injury, loss and damage to the said association.

Tenth. That the business of said association is of a confidential nature, the value of which in great measure depends upon its being and continuing confidential. That to produce for the inspection of complainants' counsel and his witness all the files and papers relating to the business of said association would necessarily make the same public and destroy in a great measure the value of said business of said association by furnishing to its principal competitor, the Foster Lumber Mercantile Agency, such information which has been gathered by the defendant association at great cost and expense and after twenty-six years of continuous labor. That this suit was not commenced, and the present inquiry is not conducted in good faith for the benefit of the complainant, but for the purpose of eliciting information with reference to the business of the Lumbermen's Credit Association; regardless of whether such information shows any infringement of alleged copyright, as claimed in the bill or not; that this suit was instigated and is being pursued by the Foster Lumber Mercantile Agency for the

sole purpose of forcing or attempting to force said association out of business; and in this connection and in connection with the several objections, we desire to refer to the affidavits filed by the defendants on the hearing of the motion for a temporary restraining order, and read in open court in support of these objections.

The character of the information produced by appellees in reference to these seventy-three names is conclusive that there is no ground for the charges in this bill. Appellants' counsel claimed to be able to make out a clear case of piracy as to these seventy-three names, picked by an expert, and still appellees produced over 300 reports and data obtained from original sources. They were on a purely fishing expedition which, according to the authorities, was not allowable.

Ex parte Jaynes, 70 Cal., 638.

Ex parte Brown, 7 Mo. App., 494, and 72 Mo., 83.

2 Fonb. Eq. B., 6, Ch. 8, Sec. 1, Note A; 54 Barb., 557.

Walker v. *The Granite Bank*, 44 Barb., 39.

Mott v. *The Consumers' Ice Co.*, 52 How. Pr., 148.

On the hearing on the reference for a preliminary injunction, the court allowed them to examine witnesses as to twenty-eight additional names. As to these twenty-eight additional names, they made no examination whatever. After the motion for the preliminary injunction was withdrawn and the cause was regularly referred to the Special Examiner, appellants at no time asked appellees to produce additional information. Notwithstanding this, however, appellees produced original information in respect to all of the names, about

which complainants made any contention, and thus again showed their good faith. Appellants were furnished over 300 documents as to seventy-three names on the motion for the preliminary injunction. They did not call for a single document on the regular hearing. We voluntarily produced over 100 documents with reference to the twelve names in regard to which depositions were taken. How, then, under such circumstances, can appellants attack the finding and methods of the lower courts? The court made no limitation whatever as to the number of names, in regard to which appellants might examine on the regular hearing. It very properly made a limit as to the number of names on the motion for a preliminary injunction, but appellants' counsel did not exhaust even this number. The lower courts attached great weight to the comparison of the two books as shown in appellees' Exhibits 140 and 141, as well as all the other evidence produced by appellees, which covers many hundred pages of the record. We therefore submit that there is no justification for appellants' attack upon the findings of the Court of Appeals and Circuit Court.

Appellants in their brief do not deny that the Foster Agency were the instigators of this proceeding. The testimony on this point is certain and convincing. (See Rec., 722-736, 755, 744, 719.) It is clear, from the evidence secured from the enemies' camp, that the Foster Lumber Mercantile Agency were the promoters of this entire litigation. The testimony shows conclusively that the only use made of the red bound book by the Lumbermen's Credit Association, was a legitimate and fair one. Notwithstanding this, Dun & Co. have sought by the aid of the Foster Lumber Mercantile Agency to show an improper use was actually made of it. A pro-

ceeding such as the present one would injure the Lumbermen's Credit Association, and would redound to the advantage of the Foster Lumber Mercantile Agency, whether the charge of piracy were true or false. A large number of people are ready to believe even a false accusation without investigating as to the truth, and hence, if the Foster Agency through Dun & Co. could make this accusation, the injury would be all the more complete, however groundless the suspicion upon which the charge was based. Before the matter could be finally determined in the courts, a period of several years would elapse and irreparable damage would result to the Lumbermen's Credit Association, and the Foster Lumber Mercantile Agency would build up its own business on the ruins of its competitor. In a sweeping investigation into the internal affairs of the Lumbermen's Credit Association, the Foster Lumber Mercantile Agency would also learn many of the secrets of the business and methods derived from their long experience. Thus the greatest incentive was furnished the Foster Agency to instigate this false charge, to help Dun & Co. in starting the suit and furnishing evidence on the final hearing.

We therefore submit that this suit was not instituted in good faith as a result of original investigation on the part of Dun & Co. Appellants' from any injury they had sustained did not suspect for over twenty-five years that appellees were committing any acts of piracy, and they would never have instituted this suit were it not for the instigation and assistance of a rival of the defendant, the Foster Lumber Mercantile Agency.

VIII.

THE COURT OF APPEALS DID NOT ERR IN DENYING THE PETITION OF APPELLANTS FOR A REHEARING OR IN REFUSING TO GRANT THEM LEAVE TO FILE A SUPPLEMENTAL BILL IN THE NATURE OF A BILL OF REVIEW.

In support of their petition appellants filed the affidavits of P. C. Howard, Harry A. McLain, John O'Connor and Thomas M. Hoyne.

These affidavits were improper, because:

First. Affidavits cannot be received or considered on a petition for rehearing.

Second. The alleged newly discovered evidence was cumulative, and merely tended to impeach testimony given in the court below.

Third. The affidavits were filed without leave of court.

We have examined with some care the act creating the Circuit Court of Appeals, approved March 31, 1891, and the amendments thereto, and cannot find in these laws anything that would indicate that this is not exclusively a court of appellate jurisdiction. There is nothing in any of these acts that can in any way be construed as giving to this court original jurisdiction. The first reference to jurisdiction is in Section 2, in which occurs this language:

> "And which shall be a court of record with appellate jurisdiction, as is hereafter limited and established."

Section 4, after first abolishing the appellate jurisdiction of the Circuit Court, proceeds:

> "But all appeals by writ of error or otherwise from said district courts shall only be subject to review in the Supreme Court of the

> United States or in the Circuit Court of Appeals hereby established, as is hereinafter provided, and the review, by appeal, by writ of error, or otherwise, from the existing circuit courts, shall be had only in the Supreme Court of the United States or in the Circuit Courts of Appeals hereby established, according to the provisions of this act regulating the same."

Section 5 of the act relates to the appeals to be taken to the Supreme Court of the United States.

Section 6 provides:

> "That the Circuit Court of Appeals established by this act shall exercise appellate jurisdiction to review by appeal or by writ of error final decisions in the district court and in the existing circuit courts in all cases other than those provided for in the preceding section of this act."

Section 10 refers to the remanding orders in cases brought either from the circuit and district courts directly to the Supreme Court of the United States, or from the Circuit Court of Appeals to the Supreme Court of the United States, or from the circuit and district courts to the Court of Appeals.

Section 11 provides and limits the time in which an appeal may be taken or writ of error sued out, and adds:

> "And all provisions of law now in force regulating the methods and system of review, through appeals or writs of error, shall regulate the methods and system of appeals and writs of error provided for in this act in respect to the Circuit Courts of Appeals," etc.

Section 14 repeals any acts relating to appeals or writs of error inconsistent with the present act.

Section 15 gives the Circuit Court of Appeals appellate jurisdiction, by writ of error or appeal, to

review the judgments, orders and decrees of the supreme courts of the territories.

It will thus be seen that under the terms and provisions of the law creating the Court of Appeals there is no provision for original jurisdiction, but it is an appellate court vested with power to review and revise the acts, judgments and decrees of the circuit and district courts. This being the case, counsel for appellants have without authority attempted to inject into their petition for a rehearing in the Court of Appeals the affidavits of Harry A. McLain, Thomas M. Hoyne, John O'Connor and P. C. Howard.

These affidavits would not be admitted in the trial court, much less in the Court of Appeals. If offered in the trial court they would be rejected as incompetent evidence, the only proper method of proving the facts being by the testimony of witnesses, who would be subject to cross-examination.

The case of *Russell* v. *Southard*, 12 Howard, 158, presented the same question as the case at bar. After the opinion of this court was pronounced, a motion was made in behalf of the appellees for a rehearing and to remand the cause to the Circuit Court for further preparation and proof, on the ground that new and material evidence had been discovered since the case was heard and decided in that court. Sundry affidavits were filed, showing the nature of the evidence which was said to have been discovered.

The opinion of the court upon this motion was delivered by Mr. Chief Justice Taney, and is as follows:

> "The decree of the Circuit Court, in this case, was reversed during the present term, and a

decree entered in favor of the appellant. A motion is now made in behalf of Daniel R. Southard, one of the appellees, to set aside the decree in this court, and to remand the case to the Circuit Court for further preparation and proof, upon the ground that new and material evidence has been discovered since the case was heard and decided in that court. In support of this motion affidavits have been filed stating the evidence newly discovered, and that it was unknown to him when the case was heard in the court below.

It is very clear that affidavits of newly-discovered testimony cannot be received for such a purpose. This court must affirm or reverse upon the case as it appears in the record. We cannot look out of it, for testimony to influence the judgment of this court sitting as an appellate tribunal. And, according to the practice of the court of chancery from its earliest history to the present time, no paper not before the court below can be read on the hearing of an appeal. *Eden* v. *Earl Bute*, 1 Bro. Par. Cas., 465; 3 Bro. Par. Cas., 546; *Studwell* v. *Palmer*, 5 Paige, 166."

In the case of *Gregory* v. *Pike*, 67 Fed. Rep., 852, the decree of the lower court was affirmed by the Circuit Court of Appeals for the First Circuit. Petitions for rehearing were then filed by appellants Gregory and Butterfield, and with Gregory's petition for a rehearing were filed certain affidavits. The court in its opinion said:

"Attached to appellant Gregory's petitions for a rehearing are certain affidavits. The petition as against Mary H. Pike refers to new matter, which it is said has been learned by the appellant Gregory since the argument of the appeals in this court. We have not examined the affidavits to ascertain whether or not they sustain this statement. Since the decision of the Supreme Court in *Brown* v. *Aspden*, 14 How., 25, holding that a re-hearing is not a matter of right, petitions for re-hearings in the Supreme

Court are held to be regulated by rule 30 of that court (3 Sup. Ct. xvi), and, consequently, in this court must be held to be regulated by our rule 29 (11 C. C. A., cxii, 47 Fed., xiii). It is thoroughly settled that on a petition for a re-hearing in the Supreme Court, especially in an equity cause, and by consequence in this court, no new matter can be introduced. *Russell* v. *Southard*, 12 How., 139, 159; *Maxwell Land-Grant Case*, 122 U. S., 365, 375, 7 Sup. Ct., 1271. The practice, of course, is less strict in the Circuit Court, or other courts of the first instance. Therefore, except in special cases, and then only after leave is granted by the court, no papers can be filed under rule 29, or as a petition for re-hearing, except the petition itself in the form provided by that rule. The clerk was not authorized to file the affidavits without leave of court first obtained, and they cannot be considered by us. If any new matters have arisen changing the equities, probably due relief will be found, but it is not in this form; and, according to the general practice in equity, it cannot ordinarily be applied for in any form which will delay the final disposition of an appeal, or the execution of the judgment following therefrom. *Southard* v. *Russell*, 16 How., 547; *Ricker* v. *Powell*, 100 U. S., 104, 108; *Gaines* v. *Rugg*, 148 U. S., 228, 242, 13 Sup. Ct., 611; *Watson* v. *Stevens*, 3 C. C. A., 411, 53 Fed., 31; *Smith* v. *Weeks*, 3 C. C. A., 644, 53 Fed., 758; Daniell, Ch. Prac. (6th Am. Ed.), 1582."

We submit that the affidavits and the matter contained in the petition are not sufficient, because the alleged newly discovered evidence which they purport to contain is merely cumulative to the evidence introduced by appellants in the trial below, or it merely tends to impeach witnesses who testified on the trial of the case in the lower court. A bill of review will not lie on the grounds of newly discovered evidence of this character. Nor would a motion for new trial even be allowable upon newly

discovered evidence of cumulative or impeaching character.

In Encyclopædia of Pleading & Practice, Vol. 3, page 583, the doctrine is set forth that a bill of review will not lie for newly discovered evidence which is merely cumulative or goes to impeach the character of witnesses. In *Southard* v. *Russell*, 16 Howard, 569, where an application was made for leave to file a bill of review on the grounds of newly discovered evidence, the Supreme Court said:

> "The rule as laid down by Chancellor Kent, 3 J. C. K., 124, is that newly discovered evidence which goes to impeach the character of witnesses examined in the original suit, or the discovery of cumulative witnesses to a litigated fact, is not sufficient. It must be different and of a very decided and controlling character. 3 J. J. Marsh, 492; Story's Eq. Plead., Sec. 413.
>
> "The soundness of this rule is too apparent to require argument, for, if otherwise, there would scarcely be an end to litigation in chancery cases, and a temptation would be held out to tamper with witnesses for the purpose of supplying defects of proof in the original cause."

This doctrine is approved and relied on in *Society of S.* v. *Watson*, 77 Fed. Rep., 514.

This rule is also laid down in the following cases:

Jones v. *Robson*, 30 Ga., 826.
Burson v. *Dosser*, 1 Heisk (Tenn.), 754.
Kern v. *Wyatt*, 89 Va., 885.
Kinsell v. *Feldman*, 28 Iowa, 497.
Owens v. *Forbes*, 9 Fla., 325.
Sewing Mac. Co. v. *Dunbar*, 32 W. Va., 335.
McDougald v. *Dougherty*, 39 Ala., 409.
Stevens v. *Hey*, 15 Ohio, 313.
Taylor v. *Boardman*, 25 Mich., 527.
Ketchum v. *Breed*, 66 Wis., 85.

Rogers v. *Marshall*, 13 Fed. Rep., 59.
Story Eq. Pl., 413.
Hines v. *Driver*, 100 Ind., 325.

Philip C. Howard, whose affidavit is set forth in the supplemental petition for rehearing, testified at great length on the original hearing, and his testimony is fully set forth on pages 694 to 707 of the record. His affidavit is merely cumulative to Mr. Ferguson's testimony or tends to impeach his own testimony given in the case. Whether the sworn testimony of a witness in open court, given when the facts are fresh in his mind and subjected to severe cross-examination, is as credible as an affidavit made several years after, when the witness is out of a position and looking for work with a rival concern, is not necessary to state. It is not necessary to give this affidavit the characterization that it merits, as that is done by the witness himself in the last paragraph of his affidavit.

We are unable to determine whether this is a petition for re-hearing or a petition for leave to file a supplemental bill in the nature of a bill of review. If it is a petition for re-hearing, we submit that affidavits are improper under the rules and decisions, and the course of practice of the Court of Appeals. If it is a petition for leave to file a supplemental bill in the nature of a bill of review, in the Circuit Court, on the grounds of newly discovered evidence, we contend that the same is improper, because it merely sets forth alleged newly discovered evidence that is cumulative or of an impeaching character and would not have changed the conclusions of the court.

CONCLUSION.

We therefore submit on behalf of appellees that the decree dismissing the bill of complaint in this cause was properly entered.

The overwhelming weight of the evidence proved conclusively that the defendant association at the expense of much time and money secured original information as the basis for the names and ratings appearing in its July, 1901, and January, 1902, reference books. The Lumbermen's Credit Association is not a concern of mushroom growth. For over thirty years it has been established and during that period has constantly increased in favor with the lumber dealers because of the superior character of its information. As the result of an active experience extending over more than a quarter of a century; it has devised as perfect a system as is known to the world at the present time for securing original and reliable information as to the names and financial worth of individuals, firms and corporations engaged in the lumber trade. Appellees' have secured and now have on file more than a million financial reports. They have many other original sources of information. Over $40,000 is expended each year in the conduct of the business. The raters who inserted the names and ratings in the two reference books testified that in each and every instance, nothing but original information was used as a basis for such name and rating. The only use made of the red bound book, was for the purpose of directing appellees' to original sources of information and in about one per cent. of the names for the purposes of comparison. However in every case

the rater secured reports and other data from original sources and in every instance the name and rating appearing in the reference book was based upon that original information.

Appellees book differs in many material respects from that of appellant. It has a value peculiar to the lumber trade not possessed by the Dun book. Its ratings are more conservative than the Dun ratings. A large number of lumbermen of this city of the highest character and standing testified as to the superiority of the Lumbermen's Credit Association reference book over the Dun publication and the greater accuracy of the information which it furnished. A comparison of the two books as indicated by Defendants' Exhibits 140 and 141 showed the wide differences between them and very forcibly illustrated the reason why the lumbermen who have put both works to the most practical test for many years, have come to regard the publication of appellees as the more reliable, thorough and trustworthy.

The character of the information consisting of over 400 reports, records and documents produced by appellees in reference to the names selected by appellants experts, proved the absolute good faith of appellee Association in going to original sources for its information, and demonstrated beyond a doubt that the reference book of the Lumbermen's Credit Association was compiled from information obtained as a result of its own independent efforts. How then could a court which deals with facts and realities have done otherwise than to dismiss the bill of complaint for want of equity.

The evidence showed conclusively that appellees have been falsely maligned. They have had to

prove their innocence by a long and expensive course of procedure. They can not be compensated for the irreparable injuries that have been inflicted upon them because of the institution of this suit even by the most favorable decision of the court.

We therefore submit that there was no error in the decree of Circuit Court and the decree of the Circuit Court of Appeals affirming the same.

FRED H. ATWOOD,
FRANK B. PEASE,
CHARLES O. LOUCKS,
Attorneys for Appellees.

DUN *v.* LUMBERMEN'S CREDIT ASSOCIATION.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

No. 138. Argued January 31, 1908.—Decided February 24, 1908.

Findings of fact in a suit in equity made by both the Circuit Court and the Circuit Court of Appeals will not be reversed by this court unless shown to be clearly erroneous.

Where the lower courts have both found that the proportion of copyrighted matter issued in a later publication, in this case a trade rating journal, is insignificant compared with the volume of independently acquired information, an injunction should be refused and the owner of the copyright remitted to a court of law to recover the damages actually sustained.

144 Fed. Rep. 83, affirmed.

THE facts are stated in the opinion.

Mr. John O'Connor and *Mr. Charles K. Offield*, with whom *Mr. Thomas M. Hoyne* and *Mr. Henry S. Towle* were on the brief, for appellants.

Mr. Fred H. Atwood and *Mr. Charles O. Loucks*, with whom *Mr. Frank B. Pease* was on the brief, for appellees.

MR. JUSTICE MOODY delivered the opinion of the court.

The appellants are the proprietors of a mercantile agency which publishes at intervals a copyrighted book of reference containing lists of merchants, manufacturers and traders in the United States and the North American British possessions. The book contains information as to the business, capital and credit rating of those who are enumerated in it. The information is obtained at large expense and is useful to those who are engaged in trade and commerce, who in large number subscribe to the privilege of consulting copies of it, which are furnished but not sold to them. The appellee is a corporation engaged in preparing and publishing a similar book, limited, however, to those engaged in the lumber and kindred trades. The book is called the Reference Book of the Lumbermen's Credit Association. The appellants brought in the Circuit Court of the United States a suit in equity, alleging an infringement of their copyright by the appellee, and praying for an injunction, for an account, and for general relief. After hearing evidence, the Circuit Court entered a decree dismissing the bill for want of equity, which, with an immaterial modification, was affirmed by the Circuit Court of Appeals. An appeal to this court was then taken.

Both the courts below made findings of fact, which are in substantial agreement. Those findings best appear by quotations from the opinions which follow. The judge of the Circuit Court said:

"From the evidence it appears that defendant admits using complainants' book, but insists that it did so merely for the purpose of comparison and for information as to names, but that in every case it, at great cost, procured original and independent information as to the rating and other facts contained in defendants' book. There are in respondents' reference book more than 60,000 names. The evidence shows that there are on hand more than 1,000,000 reports, replies to inquiries, etc. It further appears that defendants receive large

numbers of newspapers, magazines, trade journals and bulletins; that they use traveling men, lumber dealers, agents, lawyers, justices of the peace, mercantile associations, railroad companies and the clippings sent out by a number of clipping bureaus. At times defendants' mail reaches approximately 2,000 pieces of mail per day. A large force of employés and large offices are required in the management of the business.

"On the other hand, a number of instances are disclosed in the evidence which have strong tendency to establish the charge that defendants have used some of complainants' copyright material in making their book. The same mistakes occur in each. In one case complainants' witness swears to an entirely fictitious item placed in complainants' book as a test, which was duly appropriated by defendants. In regard to a number of items said to be duplicated, defendants show original investigation. Still, when all the explanations are considered, it seems to be fairly established that defendants did take some of the items complained of. Generally such *indicia* is held to indicate a substantial theft of copyright property, but taking all the evidence together I am satisfied that the items selected as tests constitute the bulk of all the items taken, and that they are of small moment in comparison with the whole.

"Defendants' book gives information on 113 subjects, complainants on 19. When we consider that the matter consists of names and other data, which, when true, must be the same in any report, and that in many cases the source of information must often be the same with both the parties thereto, it would seem to be just to lay down a different rule from that which obtains in cases where syllabi and summaries of law and fact are appropriated. Here seems to be no attempt to coin money out of another's labor. It is clearly a case in which the matter taken must be substantial and such as to really work injury to complainants.

"When we take note of the character of the items alleged to be appropriated on the one hand and the consequences of

granting the injunction prayed for, it would be an unwarrantable use of the power of the court to do so."

The Circuit Court of Appeals said:

"The question is one of fact, to be solved by a study of the evidence. From our examination we concur in the conclusion of the Circuit Court. The large features are that appellees' book of about 60,000 names contain over 16,000 (and over 400 towns) that are not in Dun's; that of the names in common only about fifteen per cent have similar capital ratings, that of the names with similar capital ratings a large proportion are classified differently respecting the particular businesses; and that six times as many different classes of information are given in appellees' book as in Dun's. On every page of appellees' book the names that are not given in Dun's and the names regarding which the information does not exceed or substantially vary from that given in Dun's bear the relation of three to one. These features are ocular confirmation of appellees' testimony regarding the long-continued, elaborate and comprehensive system of obtaining independent information. It is futile to claim that such a system, producing twenty-five per cent more names than Dun, and six times as many subjects of information concerning the persons named, is kept up at great expense merely as a cloak. It may be that the evidence would require a finding that with respect to a few names an improper use of Dun's book was made by an agent or correspondent of appellees. But the proportion is so insignificant compared with the injury from stopping appellees' use of their enormous volume of independently acquired information, that an injunction would be unconscionable. In such cases the copyright owner should be remitted to his remedy at law. Drone on Copyright, 413; *Mead* v. *West Pub. Co.*, 80 Fed. Rep. 380."

We cannot, as we are asked to do by the appellants, reverse the findings of fact made by the Circuit Court and the Circuit Court of Appeals. Successively considering the same evidence, the two courts agree in the findings. In such a case in a suit

in equity the findings will not be disturbed by this court, unless they are shown to be clearly erroneous. *Towson* v. *Moore*, 173 U. S. 17; *Brainard* v. *Buck*, 184 U. S. 99; *Shappirio* v. *Goldberg*, 192 U. S. 232. An examination of the voluminous testimony shows that it tended to sustain the findings, and that, to say the least, there is no ground for saying that the conclusions drawn from the evidence were clearly erroneous.

Accepting as true the facts found, we think the discretion of the court was wisely exercised in refusing an injunction and remitting the appellants to a court of law to recover such damage as they might there prove that they had sustained. The reasons for this conclusion are tersely stated in the opinion of the Court of Appeals, which we have quoted, and we approve them.

Judgment affirmed.